Legislative Proposals and Draft Regulations relating to Income Tax

Published by
The Honourable Ralph Goodale, P.C., M.P.,
Minister of Finance

February 2004

Canada

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Legislative Proposals

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PART 1

GENERAL

INCOME TAX ACT

1. (1) Paragraph 4(3)(*a*) of the *Income Tax Act* is replaced by the following:

(*a*) subject to paragraph (*b*), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(*b*) to (*o*), (*p*), (*r*) and (*v*) to (*x*), apply either wholly or in part to a particular source or to sources in a particular place; and

(2) Subsection (1) applies to the 2002 and subsequent taxation years.

2. (1) Section 6 of the Act is amended by adding the following after subsection 6(3):

Amount receivable for covenant

(3.1) If an amount (other than an amount to which paragraph (1)(*a*) applies because of subsection (11)) is receivable at the end of a taxation year by a taxpayer in respect of a covenant, agreed to by the taxpayer more than 36 months before the end of that taxation year, with reference to what the taxpayer is, or is not, to do, and the amount would be included in the taxpayer's income for the year under this subdivision if it were received by the taxpayer in the year, the amount

(*a*) is deemed to be received by the taxpayer at the end of the taxation year for services rendered as an officer or during the period of employment; and

(*b*) is deemed not to be received at any other time.

(2) Subsection 6(15.1) of the French version of the Act is replaced by the following:

Montant remis

(15.1) Pour l'application du paragraphe (15), le « montant remis » à un moment donné sur une dette émise par un débiteur s'entend au sens qui serait donné à cette expression par le paragraphe 80(1) si, à la fois :

a) la dette était une dette commerciale, au sens du paragraphe 80(1), émise par le débiteur;

b) il n'était pas tenu compte d'un montant inclus dans le calcul du revenu en raison du règlement ou de l'extinction de la dette à ce moment;

c) il n'était pas tenu compte des alinéas *f*) et *h*) de l'élément B de la formule figurant à la définition de « montant remis » au paragraphe 80(1);

d) il n'était pas tenu compte des alinéas 80(2)*b*) et *q*).

(3) Subsection (1) applies to amounts receivable in respect of a covenant agreed to after October 7, 2003.

(4) Subsection (2) applies to taxations years that end after February 21, 1994.

3. (1) The portion of subsection 7(7) of the Act before the definition "qualifying person" is replaced by the following:

Definitions

(7) The following definitions apply in this section and in subsection 47(3), paragraphs 53(1)(*j*), 110(1)(*d*) and (*d*.01) and subsections 110(1.5) to (1.8) and (2.1).

(2) Subsection (1) applies after 1998. However,

(*a*) it does not apply to a right under an agreement to which subsection 7(7) of the Act, as enacted by subsection 3(7) of chapter 22 of the Statutes of Canada, 1999, does not (except for the purpose of applying paragraph 7(3)(*b*) of the Act) apply; and

(*b*) before 2000, the portion of subsection 7(7) of the Act, as enacted by subsection (1), before the definition "qualifying person" is to be read as follows:

(7) The definitions in this subsection apply in this section and in paragraph 110(1)(*d*) and subsections 110(1.5) to (1.8).

4. (1) Paragraph 8(1)(*b*) of the Act is replaced by the following:

Legal expenses of employee

(*b*) amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this subdivision to be included in computing the taxpayer's income;

(2) The portion of paragraph 8(1)(*i*) of the Act before subparagraph (i) is replaced by the following:

Dues and other expenses of performing duties

(*i*) an amount paid by the taxpayer in the year, or on behalf of the taxpayer in the year if the amount paid on behalf of the taxpayer is required to be included in the taxpayer's income for the year, as

(3) Subsection (1) applies to amounts paid in the 2001 and subsequent taxation years.

5. (1) Paragraph 12(1)(*x*) of the Act is amended by adding the following after subparagraph (v):

(v.1) is not an amount received by the taxpayer in respect of a restrictive covenant, as defined by subsection 56.4(1), that was included, under subsection 56.4(2), in computing the income of a person related to the taxpayer,

(2) Section 12 of the Act is amended by adding the following after subsection (2):

No deferral of section 9 income under paragraph (1)(*g*)

(2.01) Paragraph (1)(*g*) does not defer the inclusion in income of any amount that would, if this section were read without reference to that paragraph, be included in computing the taxpayer's income in accordance with section 9.

(3) Subsection (1) applies after October 7, 2003.

6. (1) Subsection 13(1) of the Act is replaced by the following:

Recaptured depreciation

13. (1) If, at the end of a taxation year, the total of the amounts determined for E to K in the definition "undepreciated capital cost" in subsection (21) in respect of a taxpayer's depreciable property of a particular prescribed class exceeds the total of the amounts determined for A to D.1 in that definition in respect of that property, the excess shall be included in computing the taxpayer's income of the year.

(2) Subparagraph 13(4)(*c*)(ii) of the Act is replaced by the following:

(ii) the amount that has been used by the taxpayer to acquire

(A) if the former property is described in paragraph (*a*), before the later of the end of the second taxation year following the initial year and 24 months after the end of the initial year, or

(B) in any other case, before the later of the end of the first taxation year following the initial year and 12 months after the end of the initial year,

a replacement property of a prescribed class that has not been disposed of by the taxpayer before the time at which the taxpayer disposed of the former property, and

(3) Section 13 of the Act is amended by adding the following after subsection (4.1):

Election – limited period franchise, concession or license

(4.2) Subsection (4.3) applies in circumstances where

(*a*) a taxpayer (in this subsection and subsection (4.3) referred to as the "transferor") has, pursuant to a written agreement with a person or partnership (in this subsection and subsection (4.3) referred to as the "transferee"), at any time disposed of or terminated a former property that is a franchise, concession or licence for a limited period that is wholly attributable to the carrying on of a business at a fixed place;

(*b*) the transferee acquired the former property from the transferor or, on the termination, acquired a similar property in respect of the same fixed place from another person or partnership; and

(*c*) the transferor and the transferee jointly elect in their returns of income for their taxation years that include that time to have subsection (4.3) apply in respect of the acquisition and the disposition or termination.

Effect of election

(4.3) Where this subsection applies in respect of an acquisition and a disposition or termination,

(*a*) if the transferee acquired a similar property referred to in paragraph (4.2)(*b*), the transferee is deemed to have also acquired the former property at the time that the former property was terminated and to own the former property until the transferee no longer owns the similar property;

(*b*) if the transferee acquired the former property referred to in paragraph (4.2)(*b*), the transferee is deemed to own the former property until such time as the transferee owns neither the former property nor a similar property in respect of the same fixed place to which the former property related;

(*c*) for the purpose of calculating the amount deductible under paragraph 20(1)(*a*) in respect of the former property in computing the transferee's income, the life of the former property remaining on its acquisition by the transferee is deemed to be equal to the period that was the life of the former property remaining on its acquisition by the transferor; and

(*d*) any amount that would, if this Act were read without reference to this subsection, be an eligible capital amount to the transferor or an eligible capital expenditure to the transferee in respect of the disposition or termination of the former property by the transferor is deemed to be

(i) neither an eligible capital amount nor an eligible capital expenditure,

(ii) an amount required to be included in computing the capital cost to the transferee of the former property, and

(iii) an amount required to be included in computing the proceeds of disposition to the transferor in respect of a disposition of the former property.

(4) Subsection (1) applies to taxation years that end after February 23, 1998.

(5) Clause 13(4)(*c*)(ii)(A) of the Act, as enacted by subsection (2) applies in respect of dispositions that occur in taxation years that end on or after December 20, 2000.

(6) Clause 13(4)(*c*)(ii)(B) of the Act, as enacted by subsection (2) applies in respect of dispositions that occur in taxation years that end on or after December 20, 2001.

(7) Subsection (3) applies in respect of dispositions and terminations that occur after December 20, 2002.

7. (1) The portion of subsection 14(1.01) of the Act before paragraph (*c*) is replaced by the following:

Election re capital gain

(1.01) A taxpayer may, in the taxpayer's return of income for a taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply to a disposition made at any time in the year of an eligible capital property in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's eligible capital expenditure in respect of the acquisition of the property, that eligible capital expenditure can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

(*a*) for the purpose of subsection (5) other than the description of A in the definition "cumulative eligible capital", the proceeds of disposition of the property are deemed to be equal to the amount of that eligible capital expenditure;

(*b*) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to the amount of that eligible capital expenditure, for proceeds of disposition equal to the actual proceeds; and

(2) Section 14 of the Act is amended by adding the following after subsection (1.01):

Election re property acquired with pre-1972 outlays or expenditures

(1.02) If at any time in a taxation year a taxpayer has disposed of an eligible capital property in respect of which an outlay or expenditure to acquire the property was made before 1972 (which outlay or expenditure would have been an eligible capital expenditure if it had been made or incurred as a result of a transaction that occurred after 1971), the taxpayer's actual proceeds of the disposition exceed the total of those outlays or expenditures, that total can be determined, subsection 21(1) of the *Income Tax Application Rules* applies in respect of the disposition and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil, the taxpayer may, in the taxpayer's return of income for the taxation year, or with an election under subsection 83(2) filed on or before the taxpayer's filing-due date for the taxation year, elect that the following rules apply:

(*a*) for the purpose of subsection (5) other than the description of A in the definition "cumulative eligible capital", the proceeds of disposition of the property are deemed to be nil;

(*b*) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to nil, for proceeds of disposition equal to the amount determined, in respect of the disposition, under subsection 21(1) of the *Income Tax Application Rules*; and

(*c*) if the eligible capital property is at that time a qualified farm property (within the meaning assigned by subsection 110.6(1)) of the taxpayer, the capital property deemed by paragraph (*b*) to have been disposed of by the taxpayer is deemed to have been at that time a qualified farm property of the taxpayer.

Non-application of subsections (1.01) and (1.02)

(1.03) Subsections (1.01) and (1.02) do not apply to a disposition by a taxpayer of a property

(*a*) that is goodwill; or

(*b*) that was acquired by the taxpayer

(i) in circumstances where an election was made under subsection 85(1) or (2) and the amount agreed on in that election in respect of the property was less than the fair market value of the property at the time it was so acquired, and

(ii) from a person or partnership with whom the taxpayer did not deal at arm's length, and for whom the eligible capital expenditure in respect of the acquisition of the property cannot be determined.

(3) Paragraph 14(3)(*a*) of the Act is replaced by the following:

(*a*) the amount determined for E in the definition "cumulative eligible capital" in subsection (5) in respect of the disposition of the property by the transferor or, if the property is the subject of an election under subsection (1.01) or (1.02) by the transferor, 3/4 of the actual proceeds referred to in that subsection,

(4) The description of A in the definition "cumulative eligible capital" in subsection 14(5) of the Act is replaced by the following:

A is the amount, if any, by which 3/4 of the total of all eligible capital expenditures in respect of the business made or incurred by the taxpayer after the taxpayer's adjustment time and before that time exceeds the total of all amounts each of which is determined by the formula

$$1/2 \times (A.1 - A.2) \times (A.3/A.4)$$

where

A.1 is the amount required, because of paragraph (1)(*b*) or 38(*a*), to be included in the income of a person or partnership (in this definition referred to as the "transferor") not dealing at arm's length with the taxpayer in respect of the disposition after December 20, 2002 of a property that was an eligible capital property acquired by the taxpayer directly or indirectly, in any manner whatever, from the transferor and not disposed of by the taxpayer before that time,

A.2 is the total of all amounts that can reasonably be considered to have been claimed as deductions under section 110.6 by the transferor in respect of that disposition,

A.3 is the transferor's proceeds from that disposition, and

A.4 is the transferor's total proceeds of disposition of eligible capital property in the taxation year of the transferor in which the property described in A.1 was disposed of,

(5) The description of R in the definition "cumulative eligible capital" in subsection 14(5) of the Act is replaced by the following:

R is the total of all amounts each of which is an amount included, in computing the taxpayer's income from the business for a taxation year that ended before that time and after the taxpayer's adjustment time

(*a*) in the case of a taxation year that ends after February 27, 2000, under paragraph (1)(*a*), or

(*b*) in the case of a taxation year that ended before February 28, 2000,

(i) under subparagraph (1)(*a*)(iv), as that subparagraph applied in respect of that taxation year, or

(ii) under paragraph (1)(*b*), as that paragraph applied in respect of that taxation year, to the extent that the amount so included is in respect of an amount included in the amount determined for P;

(6) The portion of subsection 14(6) of the Act before paragraph (*a*) is replaced by the following:

Exchange of property

(6) If in a taxation year (in this subsection referred to as the "initial year") a taxpayer disposes of an eligible capital property (in this section referred to as the taxpayer's "former property") and the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquires an eligible capital property that is a replacement property for the taxpayer's former property, the amount, not exceeding the amount that would otherwise be included in the amount determined for E in the definition "cumulative eligible capital" in subsection (5) (if the description of E in that definition were read without reference to "3/4 of") in respect of a business, that has been used by the taxpayer to acquire the replacement property before the later of the end of the first taxation year after the initial year and 12 months after the end of the initial year

(7) Subsection (1) applies to dispositions of eligible capital property that occur in taxation years that end after February 27, 2000 except that, in its application to those dispositions of eligible capital property that occur before December 21, 2002, the portion of subsection 14(1.01) of the Act before paragraph (*c*), as enacted by subsection (1), is to be read as follows:

(1.01) A taxpayer may, in the taxpayer's return of income for a taxation year, elect that the following rules apply to a disposition made at any time in the taxation year of an eligible capital property (other than goodwill) in respect of a business, if the taxpayer's actual proceeds of the disposition exceed the taxpayer's cost of the property, that cost can be determined and, for taxpayers who are individuals, the taxpayer's exempt gains balance in respect of the business for the taxation year is nil:

(*a*) for the purposes of subsection (5), the proceeds of disposition of the property are deemed to be equal to that cost;

(*b*) the taxpayer is deemed to have disposed at that time of a capital property that had, immediately before that time, an adjusted cost base to the taxpayer equal to that cost, for proceeds of disposition equal to the actual proceeds; and

(8) Subsection 14(1.02) of the Act, as enacted by subsection (2), applies to dispositions of eligible capital property that occur after December 20, 2002.

(9) Subsection 14(1.03) of the Act, as enacted by subsection (2), applies to dispositions of eligible capital property that occur after December 20, 2002, except that, in its application to those dispositions that occur on or before ANNOUNCEMENT DATE, it is to be read without reference to its paragraph (*b*).

(10) Subsections (3) to (5) apply to taxation years that end after February 27, 2000.

(11) Subsection (6) applies in respect of dispositions that occur in taxation years that end on or after December 20, 2001.

8. (1) Subsection 15(1.21) of the French version of the Act is replaced by the following:

Montant remis

(1.21) Pour l'application du paragraphe (1.2), le « montant remis » à un moment donné sur une dette émise par un débiteur s'entend au sens qui serait donné à cette expression par le paragraphe 80(1) si, à la fois :

a) la dette était une dette commerciale, au sens du paragraphe 80(1), émise par le débiteur;

b) il n'était pas tenu compte d'un montant inclus dans le calcul du revenu (autrement que par l'effet de l'alinéa 6(1)*a*)) en raison du règlement ou de l'extinction de la dette;

c) il n'était pas tenu compte des alinéas *f*) et *h*) de l'élément B de la formule figurant à la définition de « montant remis » au paragraphe 80(1);

d) il n'était pas tenu compte des alinéas 80(2)*b*) et *q*).

(2) Subsection 15(2) of the French version of the Act is replaced by the following:

Dette d'un actionnaire

(2) La personne ou la société de personnes – actionnaire d'une société donnée, personne ou société de personnes rattachée à un tel actionnaire ou associé d'une société de personnes, ou bénéficiaire d'une fiducie, qui est un tel actionnaire – qui, au cours d'une année d'imposition, obtient un prêt ou devient la débitrice de la société donnée, d'une autre société liée à celle-ci ou d'une société de personnes dont la société donnée ou une société liée à celle-ci est un associé, est tenue d'inclure le montant du prêt ou de la dette dans le calcul de son revenu pour l'année. Le présent paragraphe ne s'applique pas aux sociétés résidant au Canada ni aux sociétés de personnes dont chacun des associés est une société résidant au Canada.

(3) Subsection (1) applies to taxation years that end after February 21, 1994.

(4) Subsection (2) applies to loans made and indebtedness arising in the 1990 and subsequent taxation years.

10. (1) Subsection 18(1) of the Act is amended by striking out the word "and" at the end of paragraph (*u*), by adding the word "and" at the end of paragraph (*v*) and by adding the following after paragraph (*v*):

Underlying payments on qualified securities

(*w*) except as expressly permitted, an amount that is deemed by subsection 260(5.1) to have been received by another person as an amount described in any of paragraphs 260(5.1)(*a*) to (*c*).

(2) Paragraph 18(14)(*c*) of the Act is replaced by the following:

(*c*) the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1, paragraph 132.2(3)(*a*) or (*c*) or subsection 138(11.3) or 149(10);

(3) Subsection (1) applies after 2001.

(4) Subsection (2) applies to dispositions that occur after 1998.

11. (1) Subsection 18.1(15) of the Act is replaced by the following:

Non-application – risks ceded between insurers

(15) Subsections (2) to (13) do not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(*a*) the expenditure is in respect of commissions, or other expenses, related to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer; and

(*b*) the taxpayer and the person to whom the expenditure is made, or is to be made, are both insurers who are subject to the supervision of

(i) the Superintendent of Financial Institutions, if the taxpayer or that person, as the case may be, is an insurer who is required by law to report to the Superintendent of Financial Institutions, or

(ii) the Superintendent of Insurance, or other similar officer or authority, of the province under whose laws the insurer is incorporated, in any other case.

Non-application — no rights, tax benefits or shelters

(16) Subsections (2) to (13) do not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(*a*) no portion of the matchable expenditure can reasonably be considered to have been paid to another taxpayer, or to a person or partnership with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer;

(*b*) no portion of the matchable expenditure can reasonably be considered to relate to a tax shelter or a tax shelter investment (within the meaning assigned by subsection 143.2(1)); and

(*c*) none of the main purposes for making the matchable expenditure can reasonably be considered to have been to obtain a tax benefit for the taxpayer, a person or partnership with whom the taxpayer does not deal at arm's length, or a person or partnership that holds, directly or indirectly, an interest in the taxpayer.

Revenue exception

(17) Paragraph (4)(*a*) does not apply in determining the amount for a taxation year that may be deducted in respect of a taxpayer's matchable expenditure in respect of a right to receive production if

(*a*) before the end of the taxation year in which the matchable expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of any of those amounts that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production that relates to the matchable expenditure exceeds 80% of the matchable expenditure; and

(*b*) no portion of the matchable expenditure can reasonably be considered to have been paid to another taxpayer, or to a person or partnership with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer.

(2) Subject to subsection (3), subsection (1) applies in respect of expenditures made by a taxpayer on or after September 18, 2001 in respect of a right to receive production, except if

(*a*) the expenditure was

(i) required to be made under a written agreement made by the taxpayer before September 18, 2001,

(ii) made under, or described in, the terms of a prospectus, preliminary prospectus or registration statement that was, before September 18, 2001, filed with a public authority in Canada in accordance with the securities legislation of Canada or of a province and, if required by law, accepted for filing by the public authority before September 18, 2001, or

(iii) made under, or described in, the terms of an offering memorandum distributed as part of an offering of securities if

(A) the memorandum contains a complete, or substantially complete, description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before September 18, 2001,

(C) solicitations in respect of a sale of the securities contemplated in the offering were made before September 18, 2001, and

(D) the sale of the securities contemplated in the offering was substantially in accordance with the memorandum;

(*b*) the expenditure was made before 2002;

(*c*) the expenditure was made in consideration for services that were rendered in Canada before 2002 in respect of an activity, or a business, all or substantially all of which was carried on in Canada;

(*d*) there is no agreement, or other arrangement, under which the obligation of any taxpayer in respect of the expenditure can, on or after September 18, 2001 be changed, reduced or waived if there is a change to, or an adverse assessment under, the Act;

(*e*) if the right to receive production is, or is related to, a tax shelter investment, a tax shelter identification number in respect of the tax shelter was obtained before September 18, 2001; and

(*f*) if the expenditure was made under, or described in, the terms of a document that is a prospectus, a preliminary prospectus, a registration statement or an offering memorandum (and regardless of whether the expenditure was also made under a written agreement)

(i) all of the funds raised pursuant to the document that may reasonably be used to make a matchable expenditure were received by the taxpayer before 2002,

(ii) all or substantially all of the securities distributed pursuant to the document for the purpose of raising the funds described in subparagraph (i) were acquired before 2002 by a person who is not

(A) a promoter, or an agent of a promoter, of the securities, other than an agent of the promoter who acquired the security as principal and not for resale,

(B) a vendor of the right to receive production,

(C) a broker or dealer in securities, other than a person who acquired the security as principal and not for resale, or

(D) a person who does not deal at arm's length with a person to whom clause (A) or (B) applies, and

(iii) all or substantially all of the funds raised pursuant to the document before 2002 were used to make expenditures that were required to be made pursuant to agreements in writing made before September 18, 2001.

(3) Subsection (1) does not apply to an expenditure made by a taxpayer in respect of a right to receive production in respect of a particular film or video production if

(*a*) expenditures in respect of the particular film or video production

(i) were made before September 18, 2001 (as determined, for the purpose of this paragraph, without reference to subsection 143.2(10) of the Act, except if a repaid amount for the purposes of that subsection is paid after 2002), or

(ii) were required to be made by the taxpayer under a written agreement made before September 18, 2001 by the taxpayer;

(*b*) principal photography of the particular film or video production

(i) began before 2002,

(ii) was primarily completed before April 2002, and

(iii) was conducted primarily in Canada;

(*c*) the expenditure

(i) was made before April 2002 in the course of the taxpayer's business of providing film production services in respect of the particular film or video production (as determined for the purpose of this subparagraph without reference to subsection 143.2(10) of the Act, except to the extent that a repaid amount for the purposes of that subsection is paid after 2002)

(ii) was made under, or described in, the terms of

(A) a prospectus, preliminary prospectus or registration statement that was, before September 18, 2001, filed with a public authority in Canada in accordance with the securities legislation of Canada or of a province and, if required by law, accepted for filing by the public authority before September 18, 2001, or

(B) an offering memorandum distributed as part of an offering of securities if

(I) the memorandum contains a complete, or substantially complete, description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(II) the memorandum was distributed before September 18, 2001,

(III) solicitations in respect of a sale of the securities contemplated in the offering have been made before September 18, 2001, and

(IV) the sale of the securities contemplated in the offering was substantially in accordance with the memorandum, and

(iii) was not an amount in respect of advertising, marketing, promotion or market research;

(*d*) except where the particular film or video production is a designated production of the taxpayer, at least 75% of the total of all expenditures, each of which is an expenditure made by the taxpayer in the course of the business referred to in subparagraph (*c*)(i), is an expenditure described for the purpose of that subparagraph made in consideration for the supply of goods or services that are supplied or rendered in Canada before April 2002 by persons that are subject to tax on the expenditure under Part I or XIII of the Act;

(*e*) there is no agreement, or other arrangement, under which the obligation of any taxpayer to acquire a security distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum can, after September 18, 2001, be changed, reduced or waived if there is a change to, or an adverse assessment under, the Act;

(*f*) if the right to receive production is, or is related to, a tax shelter investment, a tax shelter identification number in respect of the tax shelter was obtained before September 18, 2001;

(*g*) all of the funds raised pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum that may reasonably be used to make a matchable expenditure before April 2002 in respect of the particular film or video production are received by the taxpayer before 2003;

(*h*) all of the securities distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum for the purpose of raising the funds described in paragraph (*g*) were acquired before 2002;

(*i*) all or substantially all of the securities distributed pursuant to the prospectus, preliminary prospectus, registration statement or offering memorandum for the purpose of raising the funds described in paragraph (*g*) were acquired by a person who is not

(i) a promoter, or an agent of a promoter, of the securities, other than an agent of the promoter who acquired the security as principal and not for resale,

(ii) a vendor of the right to receive production,

(iii) a broker or dealer in securities, other than a person who acquired the security as principal and not for resale, or

(iv) a person who does not deal at arm's length with a person referred to in subparagraph (i) or (ii); and (*j*) except where the particular film or video production is a designated production of the taxpayer, all or substantially all of the matchable expenditures made by the taxpayer that are wholly attributable to the principal photography of the particular film or video production are wholly attributable to principal photography conducted in Canada.

(4) For the purpose of paragraphs (3)(*d*) and (*j*), a designated production of a taxpayer is

(*a*) a film or video production in respect of which

(i) all of the expenditures made by the taxpayer in respect of the particular film or video production were required to be made under a written agreement made by the taxpayer before September 18, 2001,

(ii) if the taxpayer is a partnership,

(A) the taxpayer's expenditures in respect of the particular film or video production were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the taxpayer, pursuant to subscriptions in writing for the issue of units in the taxpayer,

(B) all or substantially all of those written subscriptions were received by the taxpayer on or before September 18, 2001,

(C) at least one member of the taxpayer referred to in subparagraph (i) is a partnership (in this subsection referred to as a "master partnership"),

(D) the subscriptions in writing of all master partnerships for units in the taxpayer were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the master partnerships, pursuant to subscriptions in writing for the issue of units in the master partnerships, and

(E) all or substantially all of the subscriptions in writing referred to in clause (D) were received by the master partnership on or before September 18, 2001,

(iii) if a member of a particular master partnership is a partnership (in this subsection referred to as an "original master partnership"),

(A) the subscriptions in writing of all original master partnerships for units in the particular master partnership were funded, in whole or in part, with funds raised from the initial contribution of capital of members of the original master partnerships, pursuant to subscriptions in writing for the issue of units in the original master partnerships, and

(B) all or substantially all of those written subscriptions were received by the original master partnership on or before September 18, 2001, and

(iv) no member of an original master partnership is a partnership, an interest in which is a tax shelter; or

(*b*) a film or video production in respect of which

(i) principal photography was all or substantially all complete before September 18, 2001; and

(ii) all or substantially all of the taxpayer's expenditures were made on or before September 18, 2001 (as determined, for the purpose of this paragraph, without reference to subsection 143.2(10) of the Act, except if a repaid amount for the purposes of that subsection is paid after 2002).

12. (1) Subsection 20(8) of the Act is amended by striking out the word "or" at the end of paragraph (*a*) and by adding the following after paragraph (*b*):

(*c*) the purchaser of the property sold was a corporation that, immediately after the sale,

(i) was controlled, directly or indirectly, in any manner whatever, by the taxpayer,

(ii) was controlled, directly or indirectly, in any manner whatever, by a person or group of persons that controlled the taxpayer, directly or indirectly, in any manner whatever, or

(iii) controlled the taxpayer, directly or indirectly, in any manner whatever; or

(*d*) the purchaser of the property sold was a partnership in which the taxpayer was, immediately after the sale, a majority interest partner.

(2) Subsection 20(12) of the Act is replaced by the following:

Foreign non-business income tax

(12) In computing the income of a taxpayer who is resident in Canada at any time in a taxation year from a business or property for the year, there may be deducted any amount that the taxpayer claims that does not exceed the non-business income tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by subsection 126(7) read without reference to paragraphs (*c*) and (*e*) of the definition "non-business income tax" in that subsection) in respect of that income, other than any of those taxes paid that can, in whole or in part, reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

(3) Paragraph 20(16)(*a*) of the Act is replaced by the following:

(*a*) the total of all amounts used to determine A to D.1 in the definition "undepreciated capital cost" in subsection 13(21) in respect of a taxpayer's depreciable property of a particular class exceeds the total of all amounts used to determine E to K in that definition in respect of that property, and

(4) Subsection 20(16.1) of the Act is replaced by the following:

Non-application of subsection (16)

(16.1) Subsection (16) does not apply

(*a*) in respect of a passenger vehicle of a taxpayer that has a cost to the taxpayer in excess of $20,000 or any other amount that is prescribed; and

(*b*) in respect of a taxation year in respect of a property that was a former property deemed by paragraph 13(4.3)(*a*) or (*b*) to be owned by the taxpayer, if

(i) within 24 months after the taxpayer last owned the former property, the taxpayer or a person not dealing at arm's length with the taxpayer acquires a similar property in respect of the same fixed place to which the former property applied, and

(ii) at the end of the taxation year, the taxpayer or the person owns the similar property or another similar property in respect of the same fixed place to which the former property applied.

(5) Subsection (1) applies in respect of property sold by a taxpayer after December 20, 2002. However, if a property so sold pursuant to an agreement in writing made before December 21, 2002 is transferred to the purchaser before 2004

(*a*) subsection 20(8) of the Act, as it read immediately before the enactment of subsection (1), applies in respect of the property; and

(*b*) for the purpose of applying paragraph 20(1)(*n*) of the Act to the taxpayer for a taxation year in respect of the property, a reasonable amount as a reserve in respect of an amount not due in respect of the sale may not exceed the amount that would be reasonable if the proceeds from any subsequent disposition of the property that the purchaser receives before the end of the taxation year were received by the taxpayer.

(6) Subsection (2) applies after December 20, 2002 in respect of taxes paid at any time.

(7) Subsection (3) applies to taxation years that end after February 23, 1998.

(8) Subsection (4) applies in respect of taxation years that end after December 20, 2002.

13. (1) Subclause 37(8)(*a*)(ii)(B)(V) of the Act is replaced by the following:

> (V) the cost of materials consumed or transformed in the prosecution of scientific research and experimental development in Canada, or

(2) Subsection (1) applies to costs incurred after February 23, 1998.

14. (1) The Act is amended by adding the following after section 38:

Allocation of gain re certain gifts

38.1 If a taxpayer is entitled to an amount of an advantage in respect of a gift of property described in paragraph 38(*a*.1) or (*a*.2),

(*a*) those paragraphs apply only to that proportion of the taxpayer's capital gain in respect of the gift that the eligible amount of the gift is of the taxpayer's proceeds of disposition in respect of the gift; and (*b*) paragraph 38(*a*) applies to the extent that the taxpayer's capital gain in respect of the gift exceeds the amount of the capital gain to which paragraph 38(*a*.1) or (*a*.2) applies.

(2) Subsection (1) applies to gifts made after December 20, 2002.

15. (1) Paragraph 40(1.01)(*c*) of the Act is replaced by the following:

(*c*) the amount that the taxpayer claims in prescribed form filed with the taxpayer's return of income for the particular year, not exceeding the eligible amount of the gift, where the taxpayer is not deemed by subsection 118.1(13) to have made a gift of property before the end of the particular year as a consequence of a disposition of the security by the donee or as a consequence of the security ceasing to be a non-qualifying security of the taxpayer before the end of the particular year.

(2) Paragraph 40(2)(*a*) of the Act is amended by striking out the word "or" at the end of subparagraph (i), by adding the word "or" at the end of subparagraph (ii), and by adding the following after subparagraph (ii):

(iii) the purchaser of the property sold is a partnership in which the taxpayer was, immediately after the sale, a majority interest partner;

(3) Paragraph 40(3.14)(*a*) of the English version of the Act is replaced by the following:

(*a*) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions, from misconduct or from fault of another member of the partnership or an employee, an agent or a representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership);

(4) Paragraph 40(3.5)(*b*) of the Act is replaced by the following:

(*b*) a share of the capital stock of a corporation that is acquired in exchange for another share in a transaction is deemed to be a property that is identical to the other share if

(i) section 51, 86, or 87 applies to the transaction, or

(ii) the following conditions are met:

(A) section 85.1 applies to the transaction,

(B) subsection (3.4) applied to a prior disposition of the other share, and

(C) none of the times described in any of subparagraphs (3.4)(*b*)(i) to (v) has occurred in respect of the prior disposition.

(5) Subsection (1) applies to gifts made after December 20, 2002.

(6) Subsection (2) applies to sales that occur after December 20, 2002.

(7) Subsection (3) applies after June 20, 2001.

(8) Subsection (4) applies to dispositions of property that occur after April 26, 1995, except that it does not apply to any of those dispositions by a person or partnership that occurred before 1996 and that is described in subsection 247(1) of the *Income Tax Amendments Act, 1997* unless the person or partnership, as the case may be, made a valid election under subsection 247(2) of that Act.

16. (1) The portion of subsection 43(2) of the Act before the formula in paragraph (*a*) is replaced by the following:

Ecological gifts

(2) For the purposes of subsection (1) and section 53, where at any time a taxpayer disposes of a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude, in circumstances where subsection 110.1(5) or 118.1(12) applies,

(*a*) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the covenant, easement or real servitude, as the case may be, is deemed to be equal to the amount determined by the formula

(2) Subsection (1) applies to gifts made after December 20, 2002.

17. (1) The portion of subsection 43.1(1) of the Act before paragraph (*a*) is replaced by the following:

Life estates in real property

43.1 (1) Notwithstanding any other provision of this Act, if at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply or by way of a gift to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection 118.1(1)) to a person or partnership and retains a life estate or an estate *pur autre vie* (in this section called the "life estate") in the property, the taxpayer is deemed

(2) Subsection (1) applies to dispositions that occur after February 27, 1995.

18. (1) Paragraphs 44(1)(*c*) and (*d*) of the Act are replaced by the following:

(*c*) if the former property is described in paragraph (*a*), before the later of the end of the second taxation year following the initial year and 24 months after the end of the initial year, and

(*d*) in any other case, before the later of the end of the first taxation year following the initial year and 12 months after the end of the initial year,

(2) Subsection 44(7) of the Act is amended by striking out the word "or" at the end of paragraph (*a*), by adding the word "or" at the end of paragraph (*b*), and by adding the following after paragraph (*b*):

(*c*) the former property of the taxpayer was disposed of to a partnership in which the taxpayer was, immediately after the disposition, a majority interest partner.

(3) Paragraph 44(1)(*c*) of the Act, as enacted by subsection (1), applies in respect of dispositions that occur in taxation years that end on or after December 20, 2000.

(4) Paragraph 44(1)(*d*) of the Act, as enacted by subsection (1), applies in respect of dispositions that occur in taxation years that end on or after December 20, 2001.

(5) Subsection (2) applies to dispositions of property by a taxpayer that occur after December 20, 2002. However, if a property so disposed of pursuant to an agreement in writing made before December 21, 2002 is transferred to the purchaser before 2004

(*a*) subsection 44(7) of the Act, as it read immediately before the enactment of subsection (2), applies in respect of the disposition of property; and

(*b*) for the purpose of applying subparagraph 44(1)(*e*)(iii) of the Act to the taxpayer for a taxation year in respect of the property, a reasonable amount as a reserve in respect of the proceeds of disposition may not exceed the amount that would be reasonable if the proceeds from any subsequent disposition of the property that the purchaser receivesbefore the end of the taxation year were received by the taxpayer.

19. (1) The portion of subsection 44.1(6) of the Act before paragraph (*b*) is replaced by the following:

Special rule — re eligible small business corporation share exchanges

(6) For the purpose of this section, where an individual receives shares of the capital stock of a particular corporation that are eligible small business corporation shares of the individual (in this subsection referred to as the "new shares") as the sole consideration for the disposition by the individual of shares issued by the particular corporation or by another corporation that were eligible small business corporation shares of the individual (in this subsection referred to as the "exchanged shares"), the new shares are deemed to have been owned by the individual throughout the period that the exchanged shares were owned by the individual if

(*a*) section 51, paragraph 85(1)(*h*), subsection 85.1(1), section 86 or subsection 87(4) applied to the individual in respect of the new shares; and

(2) The portion of subsection 44.1(7) of the Act before paragraph (*b*) is replaced by the following:

Special rule — re active business corporation share exchanges

(7) For the purpose of this section, where an individual receives common shares of the capital stock of a particular corporation (in this subsection referred to as the "new shares") as the sole consideration for the disposition by the individual of common shares of the particular corporation or of another corporation (in this subsection referred to as

the "exchanged shares"), the new shares are deemed to be eligible small business corporation shares of the individual and shares of the capital stock of an active business corporation that were owned by the individual throughout the period that the exchanged shares were owned by the individual, if

(*a*) section 51, paragraph 85(1)(*h*), subsection 85.1(1), section 86 or subsection 87(4) applied to the individual in respect of the new shares;

(3) Paragraph 44.1(12)(*b*) of the Act is replaced by the following:

(*b*) the new shares (or shares for which the new shares are substituted property) were

(i) issued by the corporation that issued the old shares,

(ii) issued by a corporation that, at or immediately after the time of issue of the new shares, was a corporation that was not dealing at arm's length with

(A) the corporation that issued the old shares, or

(B) the individual, or

(iii) issued, by a corporation that acquired the old shares (or by another corporation related to that corporation), as part of the transaction or event or series of transactions or events that included that acquisition of the old shares; and

(4) Section 44.1 of the Act is amended by adding the following after subsection (12):

Order of disposition of shares

(13) For the purpose of this section, an individual is deemed to dispose of shares that are identical properties in the order in which the individual acquired them.

(5) Subsections (1) and (2) apply to dispositions that occur after February 27, 2000.

(6) Subsection (3) applies in respect of dispositions that occur after ANNOUNCEMENT DATE.

(7) Subsection (4) applies in respect of dispositions that occur after December 20, 2002. However, if an individual so elects in

writing and files the election with the Minister of National Revenue on or before the individual's filing due date for the individual's taxation year in which this Act is assented to, subsection (4) applies, in respect of the individual, to dispositions that occur after February 27, 2000.

20. (1) Subparagraph 53(2)(*c*)(iii) of the Act is replaced by the following:

(iii) any amount deemed by subsection 110.1(4) or 118.1(8) to have been the eligible amount of a gift made, or by subsection 127(4.2) to have been an amount contributed, by the taxpayer by reason of the taxpayer's membership in the partnership at the end of a fiscal period of the partnership ending before that time,

(2) The portion of subsection 53(4) of the Act before paragraph (*a*) is replaced by the following:

Recomputation of adjusted cost base on transfers and deemed dispositions

(4) If at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(*c*), section 70 or 73, subsection 85(1), paragraph 87(4)(*a*) or (*c*) or 88(1)(*a*), subsection 97(2) or 98(2), paragraph 98(3)(*f*) or (5)(*f*), subsection 104(4), paragraph 107(2)(*a*) or (2.1)(*a*), 107.4(3)(*a*) or 111(4)(*e*) or section 128.1,

(3) Subsection (1) applies in respect of gifts and contributions made after December 20, 2002.

(4) Subsection (2) applies after ANNOUNCEMENT DATE.

21. (1) Paragraph (*c*) of the definition "superficial loss" in section 54 of the Act is replaced by the following:

(*c*) a disposition deemed by paragraph 33.1(11)(*a*), subsection 45(1), section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(3)(*a*) or (*c*), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(*b*) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

(2) Subsection (1) applies to dispositions that occur after 1998.

22. (1) The portion of subsection 54.1(1) of the English version of the Act before paragraph (*a*) is replaced by the following:

Exception to principal residence rules

54.1 (1) A taxation year in which a taxpayer does not ordinarily inhabit the taxpayer's property as a consequence of the relocation of the place of employment of the taxpayer or the taxpayer's spouse or common-law partner while the taxpayer or the taxpayer's spouse or common-law partner, as the case may be, is employed by an employer who is not a person to whom the taxpayer or the taxpayer's spouse or common-law partner is related is deemed not to be a previous taxation year referred to in paragraph (*d*) of the definition "principal residence" in section 54 if

(2) Subsection (1) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (1) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

23. (1) The definition "specified class" in subsection 55(1) of the Act is amended by striking out the word "and" at the end of paragraph (*b*) and by replacing paragraph (*c*) with the following:

(*c*) no holder of the shares is entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length an amount (other than a premium for early redemption) that is greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends on the shares, and

(*d*) the shares are non-voting in respect of the election of the board of directors except in the event of a failure or default under the terms or conditions of the shares;

(2) Subsection 55(1) of the Act is amended by adding the following in alphabetical order:

"qualified person"
« personne admissible »

"qualified person", in relation to a distribution, means a person or partnership with whom the distributing corporation deals at arm's length at all times during the course of the series of transactions or events that includes the distribution if

(*a*) at any time before the distribution,

(i) all of the shares of each class of the capital stock of the distributing corporation that includes shares that cause that person or partnership to be a specified shareholder of the distributing corporation (in this definition all of those shares in all of those classes are referred to as the "exchanged shares") are, in circumstances described in paragraph (*a*) of the definition "permitted exchange", exchanged for consideration that consists solely of shares of a specified class of the capital stock of the distributing corporation (in this definition referred to as the "new shares"), or

(ii) the terms or conditions of all of the exchanged shares are amended (which shares are in this definition referred to after the amendment as the "amended shares") and the amended shares are shares of a specified class of the capital stock of the distributing corporation,

(*b*) immediately before the exchange or amendment, the exchanged shares are listed on a prescribed stock exchange,

(*c*) immediately after the exchange or amendment, the new shares or the amended shares, as the case may be, are listed on a prescribed stock exchange,

(*d*) the exchanged shares would be shares of a specified class if they were not convertible into, or exchangeable for, other shares,

(*e*) the new shares or the amended shares, as the case may be, and the exchanged shares are non-voting in respect of the election of the board of directors of the distributing corporation except in the event of a failure or default under the terms or conditions of the shares, and (*f*) no holder of the new shares or the amended shares, as the case may be, is entitled to receive on the redemption, cancellation or acquisition of the new shares or the amended shares, as the case may be, by the distributing corporation or by any person with whom the distributing corporation does not deal at arm's length an amount (other than a premium for early redemption) that is greater than the total of the fair market value of the consideration for which the exchanged shares were issued and the amount of any unpaid dividends on the new shares or on the amended shares, as the case may be;

(3) Clause 55(3)(*a*)(iii)(B) of the Act is replaced by the following:

(B) property (other than shares of the capital stock of the dividend recipient) more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend payer,

(4) Paragraph 55(3.01)(*d*) of the Act is replaced by the following:

(*d*) proceeds of disposition are to be determined without reference to

(i) the expression "paragraph 55(2)(*a*) or" in paragraph (*j*) of the definition "proceeds of disposition" in section 54, and

(ii) section 93; and

(5) Clause 55(3.1)(*b*)(i)(B) of the Act is replaced by the following:

(B) the vendor (other than a qualified person in relation to the distribution) was, at any time during the course of the series, a specified shareholder of the distributing corporation or of the transferee corporation, and

(6) Paragraph 55(3.2)(*h*) of the Act is replaced by the following:

(*h*) in relation to a distribution, each corporation (other than a qualified person in relation to the distribution) that is a shareholder and a specified shareholder of the distributing corporation at any time during the course of a series of transactions or events, a part of which includes the distribution made by the distributing corporation, is deemed to be a transferee corporation in relation to the distributing corporation.

(7) Section 55 of the Act is amended by adding the following after subsection (3.3):

Specified shareholder exclusion

(3.4) In determining whether a person is a specified shareholder of a corporation for the purposes of the definition of "qualified person" in subsection (1), subparagraph (3.1)(*b*)(i) and paragraph (3.2)(*h*) as it applies for the purpose of subparagraph (3.1)(*b*)(iii), the expression "not less than 10% of the issued shares of any class of the capital stock of the corporation" in the definition "specified shareholder" in subsection 248(1) is to be read as the expression "not less than 10% of the issued shares of any class of the capital stock of the corporation, other than shares of a specified class (within the meaning of subsection 55(1))".

Amalgamation of related corporations

(3.5) For the purposes of paragraphs (3.1)(*c*) and (*d*), a corporation formed by an amalgamation of two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") that were related to each other immediately before the amalgamation, is deemed to be the same corporation as, and a continuation of, each of the predecessor corporations.

(8) Section 55 of the Act is amended by adding the following after subsection (5):

Unlisted shares deemed listed

(6) A share (in this subsection referred to as the "reorganization share") is deemed, for the purposes of subsection 116(6) and the definition "taxable Canadian property" in subsection 248(1), to be listed on a prescribed stock exchange if

(*a*) a dividend, to which subsection (2) does not apply because of paragraph (3)(*b*), is received in the course of a reorganization;

(*b*) in contemplation of the reorganization

(i) the reorganization share is issued to a taxpayer by a public corporation in exchange for another share of that corporation (in this subsection referred to as the "old share") owned by the taxpayer, and

(ii) the reorganization share is exchanged by the taxpayer for a share of another public corporation (in this subsection referred to as the "new share") in an exchange that would be a permitted exchange if the definition "permitted exchange" were read without reference to paragraph (*a*) and subparagraph (*b*)(ii) of that definition;

(*c*) immediately before the exchange, the old share

(i) is listed on a prescribed stock exchange, and

(ii) is not taxable Canadian property of the taxpayer; and

(*d*) the new share is listed on a prescribed stock exchange.

(9) Subsection (1) applies in respect of shares issued after December 20, 2002.

(10) Subsections (2), (5) and (6) and subsection 55(3.4) of the Act, as enacted by subsection (7), apply in respect of dividends received after 1999.

(11) Subsections (3) and (4) apply to dividends received after February 21, 1994.

(12) Subsection 55(3.5) of the Act, as enacted by subsection (7), applies in respect of dividends received after April 26, 1995.

(13) Subsection (8) applies to shares that are issued after April 26, 1995.

24. (1) Subsection 56(1) of the Act is amended by adding the following after paragraph (*l*.1):

Bad debt recovered

(*m*) any amount received by the taxpayer, or by a person who does not deal at arm's length with the taxpayer, in the year on account of a debt in respect of which a deduction was made under paragraph 60(*f*) in computing the taxpayer's income for a preceding taxation year;

(2) Paragraph 56(1)(*r*) of the Act is amended by striking out the word "or" at the end of subparagraph (ii), by adding the word "or" at the end of subparagraph (iii), and by adding the following after subparagraph (iii):

(iv) financial assistance provided under a program established by a government, or government agency, in Canada that provides income replacement benefits similar to income replacement benefits provided under a program established under the *Employment Insurance Act*.

(3) Section 56 of the Act is amended by adding the following after subsection (11):

Foreign retirement arrangement

(12) If an amount in respect of a foreign retirement arrangement is, as a result of a transaction, an event or a circumstance, considered to be distributed to an individual under the income tax laws of the country in which the arrangement is established, the amount is, for the purpose of paragraph (1)(*a*), deemed to be received by the individual as a payment out of the arrangement in the taxation year that includes the time of the transaction, event or circumstance.

(4) Subsection (1) applies after October 7, 2003.

(5) Subsection (2) applies to the 2003 and subsequent taxation years.

(6) Subsection (3) applies to the 1998 and subsequent taxation years except that, for taxation years that end before 2002, subsection 56(12) of the Act, as enacted by subsection (3), is to be read as follows:

(12) For the purpose of paragraph (1)(*a*),

(*a*) if an amount in respect of a foreign retirement arrangement is considered, under section 408A(d)(3)(C) of the *Internal Revenue Code of 1986* of the United States (in this subsection referred to as the "Code"), to be distributed to an individual as a result of a conversion of the arrangement after 1998 and before 2002, the amount is deemed to be received by the individual as a payment out of the arrangement in the taxation year that includes the time of the conversion; and

(*b*) if an individual received an amount as a payment out of or under a foreign retirement arrangement in 1998, or an amount is considered under section 408A(d)(3)(C) of the Code to be distributed to the individual as a result of a conversion of the arrangement in 1998, the individual was resident in Canada at the time of the receipt or conversion and the amount is an amount to which section 408A(d)(3)(A)(iii) of the Code applies,

(i) the amount is deemed not to have been received by the individual, and

(ii) an amount equal to the amount that is included under section 408A(d)(3)(A)(iii) or 408A(d)(3)(E) of the Code in the individual's gross income for a particular taxable year is deemed to be an amount received by the individual, in the taxation year that includes the day on which the particular taxable year begins, as a payment out of the arrangement, where the expressions "gross income" and "taxable year" in this subparagraph have the meanings assigned to those expressions by the Code.

24.1 (1) The Act is amended by adding the following after section 56.3:

Restrictive Covenants

Definitions

56.4 (1) The following definitions apply in this section.

"eligible interest"
« participation admissible »

"eligible interest", of a taxpayer, means capital property of the taxpayer that is

(*a*) a partnership interest in a partnership that carries on a business; or

(*b*) a share of the capital stock of a corporation that carries on a business.

"restrictive covenant"
« engagement de non-concurrence »

"restrictive covenant", of a taxpayer, means an agreement entered into, an undertaking made, or a waiver of an advantage or right by the taxpayer (other than an agreement or undertaking for the disposition of the taxpayer's property), whether legally enforceable or not, that affects, or is intended to affect, in any way whatever, the acquisition or provision of property or services by the taxpayer or by another taxpayer that does not deal at arm's length with the taxpayer.

"taxpayer"
« contribuable »

"taxpayer" includes a partnership.

Income - restrictive covenants

(2) There is to be included in computing a taxpayer's income for a taxation year the total of all amounts each of which is an amount in respect of a restrictive covenant of the taxpayer that is received or receivable in the taxation year by the taxpayer or by a person not dealing at arm's length with the taxpayer (other than an amount that has been included in computing the taxpayer's income because of this subsection for a preceding taxation year).

Non-application of subsection (2)

(3) Subsection (2) does not apply to an amount received or receivable by a taxpayer in a taxation year in respect of a restrictive covenant granted by the taxpayer to a person with whom the taxpayer deals at arm's length (referred to in this subsection and subsection (4) as the "purchaser") if

(*a*) section 5 or 6 applied to include the amount in computing the taxpayer's income for the taxation year or would have so applied if the amount had been received in the taxation year;

(*b*) the amount was required by the description E in the definition "cumulative eligible capital" in subsection 14(5) to be taken into account in computing the taxpayer's cumulative eligible capital in respect of a business, the taxpayer and the purchaser elect in prescribed form to apply this paragraph, and each of them includes a copy of that form in their income tax return for their taxation year that includes the day on which the restrictive covenant is agreed to and the return is filed with the Minister on or before their filing-due date for that year; or

(*c*) the amount directly relates to the taxpayer's disposition of property that is an eligible interest of the taxpayer and

(i) the disposition is to the purchaser (or to a person related to the purchaser),

(ii) the amount is consideration for an undertaking by the taxpayer not to provide property or services in competition with the property or services provided or to be provided by the purchaser (or by a person related to the purchaser),

(iii) the amount does not exceed the amount determined by the formula

$$A - B$$

where

A is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of if all restrictive covenants that may reasonably be considered to relate to a disposition of an interest in the business by any taxpayer were provided for no consideration, and

B is the amount that would be the fair market value of the taxpayer's eligible interest that is disposed of if no covenant were granted by any taxpayer that held an interest in the business,

(iv) the amount is included in the taxpayer's proceeds of disposition, as defined by section 54, of the eligible interest, and

(v) the taxpayer and the purchaser elect in prescribed form to apply this paragraph, and each of them includes a copy of that form in their income tax return for their taxation year that includes the day on which the restrictive covenant is agreed to and the return is filed with the Minister on or before their filing-due date for that year.

Treatment of purchaser

(4) For the purposes of computing the income of a purchaser, an amount paid or payable by the purchaser for a restrictive covenant is

(*a*) if the amount is required because of section 5 or 6 to be included in computing the income of an employee of the purchaser, to be considered to be wages paid or payable by the purchaser to the employee;

(*b*) if the purchaser elected under paragraph (3)(*b*), for the purpose of applying the definition "eligible capital expenditure" in subsection 14(5), to be considered to be an outlay incurred by the purchaser on account of capital; and (*c*) if the purchaser elected under subparagraph (3)(*c*)(v), and the amount relates to the purchaser's acquisition of property that is, immediately after the acquisition, an eligible interest of the purchaser, to be included in computing the cost to the purchaser of that interest.

Non-application of section 42

(5) Section 42 does not apply to an amount received or receivable as consideration for a restrictive covenant.

(2) Subsection (1) applies to amounts received or receivable by a taxpayer after October 7, 2003, other than to amounts received by the taxpayer before 2005 under a grant of a restrictive covenant made in writing on or before October 7, 2003 between the taxpayer and a person with whom the taxpayer deals at arm's length.

25. (1) Section 60 of the Act is amended by adding the following after paragraph (*e*):

Restrictive covenant - bad debt

(*f*) all debts owing to a taxpayer that are established by the taxpayer to have become bad debts in the taxation year and that are in respect of an amount included because of the operation of subsection 6(3.1) or 56.4(2) in computing the taxpayer's income in a preceding taxation year;

(2) The portion of clause 60(*l*)(ii)(A) of the Act before subclause (I) is replaced by the following:

(A) under which the taxpayer (or, if the taxpayer is mentally infirm, the taxpayer or a trust under which the taxpayer is, before the taxpayer's death, the sole person beneficially interested in amounts payable under the annuity) is the annuitant

(3) Clause 60(*l*)(ii)(B) of the Act is replaced by the following:

(B) under which the taxpayer, or a trust under which the taxpayer is, before the taxpayer's death, the sole person beneficially interested in amounts payable under the annuity, is the annuitant for a term not exceeding 18 years minus the age in whole years of the taxpayer at the time the annuity was acquired

(4) Subsection (1) applies after October 7, 2003.

(5) Subsection (2) applies to taxation years that end after 2000 except that, for those taxation years that end before 2004, the portion of clause 60(*l*)(ii)(A) of the Act before subclause (I), as enacted by subsection (2), is to be read as follows:

(A) under which the taxpayer (or, if the taxpayer is physically or mentally infirm, the taxpayer or a trust under which the taxpayer is, before the taxpayer's death, the sole person beneficially interested in amounts payable under the annuity) is the annuitant

(6) Subsection (3) applies to taxation years that end after 1988.

26. (1) The portion of clause (B) of the description of C in paragraph 63(2)(*b*) of the Act before subclause (I) is replaced by the following:

(B) a person certified in writing by a medical doctor to be a person who

(2) Subsection (1) applies to certifications made after December 20, 2002.

27. (1) The portion of subsection 66(12.6) of the Act before paragraph (*a*) is replaced by the following:

Canadian exploration expenses to flow-through shareholder

(12.6) If a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian exploration expenses (other than an expense deemed by subsection 66.1(9) to be a Canadian exploration expense of the corporation), the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purpose of subsection (12.7), to the person in respect of the share the amount, if any, by which the portion of those expenses that was incurred on or before the effective date of the renunciation (which portion is in this subsection referred to as the "specified expenses") exceeds the total of

(2) The portion of subsection 66(12.63) of the Act before paragraph (*a*) is replaced by the following:

Effect of renunciation

(12.63) Subject to subsections (12.69) to (12.702), if under subsection (12.62) a corporation renounces an amount to a person,

(3) The portion of subsection 66(12.66) of the French version of the Act before paragraph (*b*) is replaced by the following:

Frais engagés dans l'année suivante

(12.66) Pour l'application des paragraphes (12.6) et (12.601) et de l'alinéa (12.602)*b*), la société qui émet une action accréditive à une personne conformément à une convention est réputée avoir engagé des frais d'exploration au Canada ou des frais d'aménagement au Canada le dernier jour de l'année civile précédant une année civile donnée si les conditions suivantes sont réunies :

a) la société engage les frais au cours de l'année donnée;

a.1) la convention a été conclue au cours de l'année précédente;

(4) Subparagraph 66(12.66)(*b*)(iii) of the French version of the Act is replaced by the following:

(iii) seraient des dépenses visées à l'alinéa *f*) de la définition de « frais d'aménagement au Canada » au paragraphe 66.2(5) si le passage « à l'un des alinéas *a*) à *e*) » était remplacé par « aux alinéas *a*) ou *b*) »;

(5) The portion of subsection 66(12.66) of the English version of the Act after paragraph (*e*) is replaced by the following:

the corporation is for the purpose of subsection (12.6), or of subsection (12.601) and paragraph (12.602)(*b*), as the case may be, deemed to have incurred the expenses on the last day of that preceding year.

(6) Paragraphs (*d*) and (*e*) of the definition "Canadian resource property" in subsection 66(15) of the Act are replaced by the following:

(*d*) any right to a rental or royalty computed by reference to the amount or value of production from an oil or a gas well in Canada, or from a natural accumulation of petroleum or natural gas in Canada, if the payer of the rental or royalty has an interest in the well or accumulation, as the case may be, and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the well or accumulation,

(*e*) any right to a rental or royalty computed by reference to the amount or value of production from a mineral resource in Canada, if the payer of the rental or royalty has an interest in the mineral resource and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the mineral resource,

(7) The definition "flow-through share" in subsection 66(15) of the Act is replaced by the following:

"flow-through share"
« action accréditive »

"flow-through share" means a share (other than a prescribed share) of the capital stock of a principal-business corporation, or a right (other than a prescribed right) to acquire a share of the capital stock of a principal-business corporation, issued to a person under an agreement in writing made between the person and the corporation under which the corporation, for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances to which any of sections 51, 85, 85.1, 86 and 87 applies, agrees

(*a*) to incur, in the period that begins on the day that the agreement was made and ends 24 months after the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share or right is to be issued, and

(*b*) to renounce, in prescribed form and before March of the first calendar year that begins after that period, to the person in respect of the share or right, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share or right;

(8) Subsection (1) and (2) apply to renunciations made after December 20, 2002.

(9) Subsection (3) applies to expenses incurred after 1996, except that

(*a*) subsection (3) does not apply to expenses incurred in January or February 1997 in respect of an agreement that was made in 1995;

(*b*) for the purpose of applying paragraph 66(12.66)(*a*.1) of the French version of the Act, as enacted by subsection (3), to expenses incurred in 1998, any agreement made in 1996 is deemed to have been made in 1997.

(10) Subsection (6) applies to rights acquired after December 20, 2002.

(11) Subsection (7) applies to agreements made after December 20, 2002.

30. (1) Section 66.7 of the Act is amended by adding the following after subsection (10):

Amalgamation – partnership property

(10.1) For the purposes of subsections (1) to (5) and the definition "original owner" in subsection 66(15), if at any particular time there has been an amalgamation within the meaning assigned by subsection 87(1), other than an amalgamation to which subsection 87(1.2) applies, of two or more corporations (each of which is referred to in this subsection as a "predecessor corporation") to form one corporate entity (referred to in this subsection as the "new corporation") and immediately before the particular time a predecessor corporation was a member of a partnership that owned a Canadian resource property or a foreign resource property,

(*a*) the predecessor corporation is deemed

(i) to have owned, immediately before the particular time, that portion of each Canadian resource property and of each foreign resource property owned by the partnership at the particular time that is equal to the predecessor corporation's percentage share of the total of the amounts that would be paid to all members of the partnership if the partnership were wound up immediately before the particular time, and

(ii) to have disposed of those portions to the new corporation at the particular time;

(*b*) the new corporation is deemed to have, by way of the amalgamation, acquired those portions at the particular time; and (*c*) the income of the new corporation for a taxation year that ends after the particular time that can reasonably be attributable to production from those properties is deemed to be the lesser of

(i) the new corporation's share of the part of the income of the partnership for fiscal periods of the partnership that end in the year that can reasonably be regarded as being attributable to production from those properties, and

(ii) the amount that would be determined under subparagraph (i) for the year if the new corporation's share of the income of the partnership for the fiscal periods of the partnership that end in the year were determined on the basis of the percentage share referred to in paragraph (*a*).

(2) Subsection (1) applies to amalgamations that occur after 1996.

30.1 (1) The portion of section 68 of the Act that is before paragraph (*a*) is replaced by the following:

Allocation of amounts in consideration for property, services or restrictive covenants

68. If an amount received or receivable from a person can reasonably be regarded as being in part the consideration for the disposition of a particular property of a taxpayer, for the provision of particular services by a taxpayer, or for a restrictive covenant as defined by subsection 56.4(1) agreed to by a taxpayer,

(2) Section 68 of the Act is amended by deleting the word "and" at the end of paragraph (*a*), by adding the word "and" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*c*) the part of the amount that can reasonably be regarded as being consideration for the restrictive covenant is deemed to be an amount received or receivable by the taxpayer in respect of the restrictive covenant irrespective of the form or legal effect of the contract or agreement, and that part is deemed to be an amount paid or payable to the taxpayer by the person to whom the restrictive covenant was granted.

(3) Subsections (1) and (2) apply on and after ANNOUNCEMENT DATE, other than to a taxpayer's grant of a restrictive covenant made in writing by the taxpayer before ANNOUNCEMENT DATE between the taxpayer and a person with whom the taxpayer deals at arm's length.

31. (1) Paragraph 69(1)(*b*) of the English version of the Act is amended by striking out the word "and" at the end of subparagraph (iii).

(2) Subsection (1) applies to dispositions that occur after December 23, 1998.

31.1 (1) The portion of subsection 70(3) of the French version of the Act before paragraph (*a*) is replaced by the following:

Droits ou biens transférés aux bénéficiaires

(3) Si, avant l'expiration du délai accordé pour le choix prévu au paragraphe (2), un droit ou un bien auquel ce paragraphe s'appliquerait par ailleurs a été transféré ou distribué aux bénéficiaires ou à d'autres personnes ayant un droit de bénéficiaire sur la succession ou la fiducie, les règles suivantes s'appliquent :

(2) The portion of subsection 70(6) of the French version of the Act before paragraph (*a*) is replaced by the following:

Transfert ou distribution de biens à l'époux ou au conjoint de fait ou à une fiducie à leur profit

(6) Lorsqu'un bien d'un contribuable qui résidait au Canada immédiatement avant son décès est un bien auquel le paragraphe (5) s'appliquerait par ailleurs et qu'il est, par suite du décès du contribuable, transféré ou distribué :

(3) The portion of subsection 70(6.1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Transfert ou distribution du compte de stabilisation du revenu net à l'époux ou au conjoint de fait ou à une fiducie

(6.1) Lorsqu'un bien qui est un compte de stabilisation du revenu net d'un contribuable est transféré ou distribué à l'une des personnes suivantes au moment du décès du contribuable ou postérieurement et par suite de ce décès, les paragraphes (5.4) et 73(5) ne s'appliquent pas au second fonds du compte de stabilisation du revenu net du contribuable :

(4) The portion of paragraph 70(7)(*b*) of the French version of the Act before subparagraph (i) is replaced by the following:

b) le représentant légal du contribuable peut, dans la déclaration de revenu du contribuable (sauf celle produite en vertu des paragraphes (2) ou 104(23), de l'alinéa 128(2)*e*) ou du paragraphe 150(4)) dans laquelle il énumère un ou plusieurs biens, sauf un compte de stabilisation du revenu net, qui ont été transférés ou distribués à la fiducie au moment du décès du contribuable ou postérieurement et par suite de ce décès et dont la juste valeur marchande globale immédiatement après ce décès est au moins égale au total des dettes non admissibles du contribuable, faire un choix pour que, à la fois :

(5) The portion of subsection 70(9) of the French version of the Act before paragraph (*a*) is replaced by the following:

Transfert de biens agricoles à un enfant

(9) Lorsqu'un fonds de terre ou un bien amortissable d'une catégorie prescrite, qui est situé au Canada et appartient à un contribuable et auquel le paragraphe (5) s'appliquerait par ailleurs, était utilisé, avant le décès du contribuable, principalement dans le cadre d'une entreprise agricole dans laquelle le contribuable, son époux ou conjoint de fait ou l'un de ses enfants soit prenait une part active de façon régulière et continue, soit, s'il s'agit d'un bien utilisé dans le cadre de l'exploitation d'une terre à bois, prenait part dans la mesure requise par un plan d'aménagement forestier visé par règlement relativement à cette terre, que le bien est, par suite du décès du contribuable, transféré ou distribué à un enfant du contribuable qui résidait au Canada immédiatement avant ce décès, et qu'il est démontré, dans les 36 mois suivant ce décès ou, si dans ce délai le représentant légal du contribuable demande par écrit que le présent paragraphe soit applicable, dans un délai plus long que le

ministre considère acceptable dans les circonstances, que le bien est dévolu irrévocablement à l'enfant, les règles suivantes s'appliquent :

(6) The portion of subsection 70(9.1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Transfert aux enfants de biens agricoles de la fiducie

(9.1) Lorsqu'un fonds de terre ou un bien amortissable d'une catégorie prescrite, qui est situé au Canada et appartient à un contribuable, a été transféré ou distribué à une fiducie visée au paragraphe (6) ou 73(1) (dans sa version applicable aux transferts effectués avant 2000) ou à une fiducie à laquelle s'applique le sous-alinéa 73(1.01)*c*)(i), que ce bien ou un bien de remplacement, à l'égard duquel la fiducie a fait le choix prévu aux paragraphes 13(4) ou 44(1), était utilisé dans le cadre d'une entreprise agricole immédiatement avant le décès de l'époux ou du conjoint de fait du contribuable, lequel époux ou conjoint de fait était bénéficiaire de la fiducie, et que ce bien ou bien de remplacement a été, au décès de l'époux ou du conjoint de fait et par suite de ce décès, transféré ou distribué et est dévolu irrévocablement à un enfant du contribuable qui résidait au Canada immédiatement avant le décès de l'époux ou du conjoint de fait, les règles suivantes s'appliquent :

(7) The portion of subsection 70(9.2) of the French version of the Act before paragraph (*a*) is replaced by the following:

Transfert de sociétés et sociétés de personnes agricoles familiales

(9.2) Lorsque, à un moment donné, un bien d'un contribuable qui était, immédiatement avant le décès de celui- ci, une action du capital-actions d'une société agricole familiale du contribuable ou une participation dans une société de personnes agricole familiale du contribuable et auquel le paragraphe (5) s'appliquerait par ailleurs est, par suite du décès du contribuable, transféré ou distribué à un enfant du contribuable qui résidait au Canada immédiatement avant ce décès, et qu'il est démontré, dans les 36 mois suivant ce décès ou, si le représentant légal du contribuable en fait la demande écrite au ministre dans ce délai, dans un délai plus long que le ministre considère acceptable dans les circonstances, que le bien est dévolu irrévocablement à l'enfant, les règles suivantes s'appliquent :

(8) The portion of subsection 70(9.3) of the French version of the Act before paragraph (*b*) is replaced by the following:

Transfert d'une société ou société de personnes agricole familiale aux enfants de l'auteur d'une fiducie

(9.3) Lorsqu'un bien d'un contribuable a été transféré ou distribué à une fiducie visée au paragraphe (6) ou 73(1) (dans sa version applicable aux transferts effectués avant 2000) ou à une fiducie à laquelle s'applique le sous-alinéa 73(1.01)*c*)(i) et que le bien était :

a) d'une part, immédiatement avant ce transfert ou cette distribution, une action du capital-actions d'une société agricole familiale du contribuable ou une participation dans une société de personnes agricole familiale du contribuable;

(9) The portion of subsection 70(9.3) of the French version of the Act after paragraph (*b*) and before paragraph (*c*) is replaced by the following:

et que le bien, après le 10 avril 1978, a été transféré ou distribué, au décès de l'époux ou du conjoint de fait et par suite de ce décès, à un enfant du contribuable qui résidait au Canada immédiatement avant le décès de l'époux ou du conjoint de fait et est dévolu irrévocablement à l'enfant, les règles suivantes s'appliquent :

31.2 The portion of subsection 72(2) of the French version of the Act before paragraph (*a*) is replaced by the following:

Choix par les représentants légaux et le bénéficiaire du transfert concernant les provisions

(2) Lorsqu'un bien d'un contribuable qui représente le droit de recevoir une somme a été, au moment du décès du contribuable ou postérieurement et par suite de ce décès, transféré ou distribué à son époux ou conjoint de fait visé à l'alinéa 70(6)*a*) ou à une fiducie visée à l'alinéa 70(6)*b*) (appelés « bénéficiaire du transfert » au présent paragraphe), que le contribuable résidait au Canada immédiatement avant son décès et que le représentant légal du contribuable et le bénéficiaire du transfert ont fait, à l'égard du bien, un choix conjoint sur le formulaire prescrit, les règles suivantes s'appliquent :

32. (1) Subsection 73(2) of the Act is replaced by the following:

Capital cost and amount deemed allowed to spouse, etc., or trust

(2) If a transferee is deemed by subsection (1) to have acquired any particular depreciable property of a prescribed class of a taxpayer for an amount determined under paragraph (1)(*b*) and the capital cost to the taxpayer of the particular property exceeds the amount determined under that paragraph, in applying sections 13 and 20 and any regulations made under paragraph 20(1)(*a*)

(*a*) the capital cost to the transferee of the particular property is deemed to be the amount that was the capital cost to the taxpayer of the particular property; and

(*b*) the excess is deemed to have been allowed to the transferee in respect of the particular property under regulations made under paragraph 20(1)(*a*) in computing income for taxation years before the acquisition of the particular property.

(2) Paragraph 73(3)(*c*) of the Act is replaced by the following:

(*c*) subsection 69(1) does not apply in determining the proceeds of disposition of the depreciable property, the land or the eligible capital property;

(3) Paragraph 73(4)(*b*) of the Act is replaced by the following:

(*b*) subsection 69(1) does not apply in determining the proceeds of disposition of the property; and

(4) Subsection (1) applies to transfers that occur after 1999.

(5) Subsections (2) and (3) apply to dispositions that occur after December 20, 2002.

32.1 (1) Clause 82(1)(*a*)(ii)(B) of the Act is replaced by the following:

(B) where the taxpayer is an individual, the total of all amounts each of which is, or is deemed by paragraph 260(12)(*b*) to have been, an amount paid by the taxpayer in the year and deemed by subsection 260(5.1) to have been received by another person as a taxable dividend,

(2) Subsection (1) applies

(*a*) to amounts paid in respect of arrangements made after 2001, except that, in its application to amounts paid in respect of an arrangement made before December 21, 2002, clause 82(1)(*a*)(ii)(B) of the Act, as enacted by subsection (1), is to be read without reference to the expression "or is deemed by paragraph 260(12)(*b*) to have been" unless an election referred to in paragraph 118(24)(*b*) of this Act has been made in respect of the arrangement; and

(*b*) to amounts paid in respect of arrangements made after November 2, 1998 and before 2002, if the parties to the arrangement have made the election referred to in paragraph 118(24)(*b*) of this Act, except that in its application to those arrangement made before 2002, the reference to the expression "subsection 260(5.1)" in clause 82(1)(*a*)(ii)(B) of the Act, as enacted by subsection (1), is to be read as a reference to the expression "subsection 260(5)".

32.2 (1) Subsection 84(4.1) of the Act is replaced by the following:

Deemed dividend on reduction of paid-up capital

(4.1) Any amount paid by a public corporation on the reduction of the paid-up capital in respect of any class of shares of its capital stock, otherwise than by way of a redemption, an acquisition, or a cancellation, of any shares of that class or by way of a transaction described in subsection (2) or section 86, is deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend, unless

(*a*) the amount may reasonably be considered to be derived from proceeds realized by the public corporation, or by a person or partnership in which the public corporation had a direct or indirect interest at the time that the proceeds were realized, from a transaction that occurred

(i) outside the ordinary course of the business of the corporation, or of the person or partnership that realized the proceeds, and

(ii) within the period that commenced 24 months before the payment; and

(*b*) no amount that may reasonably be considered to be derived from those proceeds was paid by the public corporation on a previous reduction of the paid-up capital in respect of any class of shares of its capital stock.

(2) Subsection (1) applies to amounts paid after 1996, except that in respect of those amounts paid before ANNOUNCEMENT DATE, subsection 84(4.1) of the Act, as enacted by subsection (1), is to be read as follows:

(4.1) Any amount paid by a public corporation on the reduction of the paid-up capital in respect of any class of shares of its capital stock, otherwise than by way of a redemption, an acquisition, or a cancellation, of any shares of that class or by way of a transaction described in subsection (2) or in section 86, is deemed to have been paid by the corporation and received by the person to whom it was paid, as a dividend, unless the amount may reasonably be considered to be derived from proceeds realized by the public corporation, or by a person or partnership in which the public corporation had a direct or indirect interest at the time that the proceeds were realized, from a transaction that occurred outside the ordinary course of the business of the public corporation, or of the person or partnership that realized the proceeds.

33. (1) The portion of paragraph 85(1)(*d*.1) of the Act before the description of B is replaced by the following:

(*d*.1) for the purpose of determining after the time of the disposition the amount to be included under paragraph 14(1)(*b*) in computing the corporation's income, there shall be added to the amount otherwise determined for C in the formula in that paragraph the amount determined by the formula

$$1/2 \times [(A \times B/C) - 2(D - E)]$$

where

A is the amount, if any, determined for Q in the definition "cumulative eligible capital" in subsection 14(5) in respect of the taxpayer's business immediately before the time of the disposition.

(2) Subsection 85(1) of the Act is amended by adding the following after paragraph (*d*.1):

(*d*.11) for the purpose of determining after the time of the disposition (referred to in this paragraph and in paragraph (*d*.12) as the "disposition time") the amount to be included under paragraph 14(1)(*a*) or (*b*) in computing the corporation's income, there shall be added to the amount otherwise determined for each of A and F in the definition "cumulative eligible capital" in subsection 14(5) the amount, if any, determined by the formula

A x B/C

where

A is the amount, if any, that would be determined for F in that definition in respect of the taxpayer's business at the beginning of the taxpayer's following taxation year if the taxpayer's taxation year that includes the disposition time had ended immediately after the disposition time, and if, in respect of the disposition, this Act were read without reference to paragraph (*d*.12),

B is the fair market value immediately before the disposition time of the eligible capital property disposed of to the corporation by the taxpayer, and

C is the fair market value immediately before the disposition time of all eligible capital property of the taxpayer in respect of the business;

(*d*.12) for the purpose of determining after the disposition time the amount to be included under paragraph 14(1)(*a*) or (*b*) in computing the taxpayer's income, the amount, if any, determined by the formula in paragraph (*d*.11) in respect of the disposition is to be deducted from each of the amounts otherwise determined

(i) by subparagraph 14(1)(*a*)(ii), and

(ii) for variable B in the formula in paragraph 14(1)(*b*);

(3) Subsections (1) and (2) apply in respect of dispositions that occur after December 20, 2002.

34. (1) Subparagraphs 86.1(2)(*c*)(ii) and (iii) of the Act are replaced by the following:

(ii) at the time of the distribution, the shares of the class that includes the original shares are widely held and

(A) are actively traded on a prescribed stock exchange in the United States, or

(B) are required, under the *Securities Exchange Act of 1934* of the United States, as amended from time to time, to be registered with the Securities and Exchange Commission of the United States and are so registered, and

(iii) under the provisions of the *Internal Revenue Code of 1986* of the United States, as amended from time to time, that apply to the distribution, the shareholders of the particular corporation who are resident in the United States are not taxable in respect of the distribution;

(2) Subparagraph 86.1(2)(*e*)(i) of the Act is replaced by the following:

(i) that, at the time of the distribution, the shares of the class that includes the original shares are shares described in subparagraph (*c*)(ii) or (*d*)(ii),

(3) Subparagraph 86.1(2)(*e*)(vi) of the Act is replaced by the following:

(vi) in the case of a distribution that is not prescribed, that the distribution is not taxable under the provisions of the *Internal Revenue Code of 1986* of the United States, as amended from time to time, that apply to the distribution,

(4) Subsections (1) to (3) apply to distributions made after 1999 except that, with respect to a distribution in respect of original shares described in clause 86.1(2)(*c*)(ii)(B) of the Act, as enacted by subsection (1),

(*a*) information referred to in paragraph 86.1(2)(*e*) of the Act is deemed to be provided to the Minister of National Revenue on a timely basis if it is provided to that Minister before the 90th day after the day on which this Act is assented to; and

(*b*) an election referred to in paragraph 86.1(2)(*f*) of the Act is deemed to be filed on a timely basis if it is filed with the Minister of National Revenue before the 90th day after the day on which this Act is assented to.

35. (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (*g*.4):

Patronage dividends

(*g*.5) for the purpose of section 135, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Paragraph 87(2)(*j*.91) of the Act is replaced by the following:

Part I.3 and Part VI tax

(*j*.91) for the purpose of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any corporation for any taxation year that ends before the amalgamation;

(3) Subsection 87(2) of the Act is amended by adding the following after paragraph (*l*.3):

Subsection 13(4.2) election

(*l*.4) for the purposes of subsection 13(4.3) and paragraph 20(16.1)(*b*), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(4) Subsection 87(2) of the Act is amended by adding the following after paragraph (*q*):

Employees profit sharing plan

(*r*) an election made under subsection 144(10) by a predecessor corporation is deemed to be an election made by the new corporation;

(5) Paragraph 87(2)(*mm*) of the Act is repealed.

(6) Section 87 of the Act is amended by adding the following after subsection (2.2):

Quebec credit unions

(2.3) For the purpose of applying this section to an amalgamation governed by section 689 of *An Act respecting financial services cooperatives*, R.S.Q., c. C-67.3, an investment deposit of a credit union is deemed to be a share of a separate class of the capital stock of a predecessor corporation in respect of the amalgamation the adjusted cost base and paid up capital of which to the credit union is equal to the adjusted cost base to the credit union of the investment deposit immediately before the amalgamation if (*a*) immediately before the amalgamation, the investment deposit is an investment deposit to which section 425 of the *Savings and Credit Unions Act*, R.S.Q., c. C-4.1, applies to the investment fund of that predecessor corporation; and

(*b*) on the amalgamation the credit union disposes of the investment deposit for consideration that consists solely of shares of a class of the capital stock of the new corporation.

(7) Paragraphs 87(4.4)(*c*) and (*d*) of the Act are replaced by the following:

(*c*) for the consideration under the agreement

(i) a share (in this subsection referred to as the "old share") of the predecessor corporation that was a flow-through share (other than a right to acquire a share) was issued to the person before the amalgamation, or

(ii) a right was issued to the person before the amalgamation to acquire a share that would, if it were issued, be a flow-through share, and

(*d*) the new corporation

(i) issues, on the amalgamation and in consideration for the disposition of the old share, a share (in this subsection referred to as a "new share") of any class of its capital stock to the person (or to any person or partnership that subsequently acquired the old share) and the terms and conditions of the new share are the same as, or substantially the same as, the terms and conditions of the old share, or

(ii) is, because of the right referred to in subparagraph (*c*)(ii), obliged after the amalgamation to issue to the person a share of any class of the new corporation's capital stock that would, if it were issued, be a flow-through share,

(8) Subsection 87(9) of the Act is amended by adding the following after paragraph (*a*.2):

(*a*.21) for the purpose of paragraph (4.4)(*d*)

(i) each parent share received by a shareholder of a predecessor corporation is deemed to be a share of the capital stock of the new corporation issued to the shareholder by the new corporation on the merger, and

(ii) any obligation of the parent to issue a share of any class of its capital stock to a person in circumstances described in subparagraph (4.4)(*d*)(ii) is deemed to be an obligation of the new corporation to issue a share to the person;

(9) Subsection (1) applies to amalgamations that occur, and to windings-up that begin, after 1997.

(10) Subsections (2) and (3) apply to amalgamations that occur, and to windings-up that begin, after December 20, 2002.

(11) Subsection (4) applies to amalgamations that occur, and to windings-up that begin, after 1994.

(12) Subsection (5) applies to amalgamations that occur, and to windings-up that begin, after March 20, 2003.

(13) Subsection (6) applies to amalgamations that occur after June, 2001.

(14) Subsections (7) and (8) apply to amalgamations that occur after 1997.

36. (1) Paragraph 88(1)(*c*.1) of the Act is replaced by the following:

(*c*.1) for the purpose of determining after the winding-up the amount to be included under subsection 14(1) in computing the parent's income in respect of the business carried on by the subsidiary immediately before the winding-up

(i) there shall be added to the amount otherwise determined for each of A and F in the definition "cumulative eligible capital" in subsection 14(5), the amount, if any, determined for the description of F in that definition in respect of that business immediately before the disposition, and

(ii) there shall be added to the amount determined for the description of C in the formula in paragraph 14(1)(*b*), one-half of the amount, if any, determined for the description of Q in that definition in respect of that business immediately before the disposition;

(2) Paragraph 88(1)(*c*.3) of the Act is amended by striking out the word "or" at the end of subparagraph (iv) and by adding the following after subparagraph (v):

(vi) a share of the capital stock of the subsidiary or a debt owing by it, if the share or debt, as the case may be, was owned by the parent immediately before the winding-up, or

(vii) a share of the capital stock of a corporation or a debt owing by a corporation, if the fair market value of the share or debt, as the case may be, was not, at any time after the beginning of the winding-up, wholly or partly attributable to property distributed to the parent on the winding-up;

(3) Subparagraph 88(1)(*c*.4)(i) of the Act is replaced by the following:

(i) a share of the capital stock of the parent that was

(A) received as consideration for the acquisition of a share of the capital stock of the subsidiary by the parent or by a corporation that was a specified subsidiary corporation of the parent immediately before the acquisition, or

(B) issued for consideration that consists solely of money,

(4) Paragraph 88(1)(*e*.6) of the Act is replaced by the following:

(*e*.6) if a subsidiary has made a gift in a taxation year (in this section referred to as the "gift year"), for the purposes of computing the amount deductible under section 110.1 by the parent for its taxation years that end after the subsidiary was wound up, the parent is deemed to have made a gift, in each of its taxation years in which a gift year of the subsidiary ended, equal to the amount, if any, by which the total of all amounts, each of which is the amount of a gift or, in the case of a gift made after December 20, 2002, the eligible amount of the gift, made by the subsidiary in the gift year exceeds the total of all amounts deducted under section 110.1 by the subsidiary in respect of those gifts;

(5) The portion of paragraph 88(1.1)(*e*) of the Act before subparagraph (i) is replaced by the following:

(*e*) where control of the parent has been acquired by a person or group of persons at any time after the commencement of the winding-up, or control of the subsidiary has been acquired by a person or group of persons at any time whatever, no amount in respect of the subsidiary's non-capital loss or farm loss for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary's non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(*k*) in computing its taxable income for the year is deductible only

(6) Subsection (1) applies in respect of dispositions that occur after December 20, 2002.

(7) Subsections (2) and (3) apply to windings-up that begin after 1997.

(8) Subsection (4) applies to windings-up that begin after December 20, 2002.

(9) Subsection (5) applies to windings-up that begin after May 1996.

37. (1) The portion of paragraph (*f*) of the definition « compte de dividendes en capital » in subsection 89(1) of the French version of the Act before clause (i)(B) is replaced by the following:

f) le total des montants représentant chacun un montant relatif à une distribution qu'une fiducie a effectuée sur ses gains en capital en faveur de la société au cours de la période et dont le montant est égal au moins élevé des montants suivants:

(i) l'excédent éventuel du montant visé à la division (A) sur le montant visé à la division (B):

(A) le montant de la distribution,

(2) The portion of paragraph (*g*) of the definition « compte de dividendes en capital » in subsection 89(1) of the French version of the Act before subparagraph (ii) is replaced by the following:

g) le total des montants représentant chacun un montant relatif à une distribution qu'une fiducie a effectuée en faveur de la société au cours de la période au titre d'un dividende (sauf un dividende imposable) qui a été versé à la fiducie au cours d'une année d'imposition de celle-ci tout au long de laquelle elle a résidé au Canada, sur une action du capital-actions d'une autre société résidant au Canada, et dont le montant est égal au moins élevé des montants suivants:

(i) le montant de la distribution,

(3) Paragraph (*b*) of the definition "taxable Canadian corporation" in subsection 89(1) of the Act is replaced by the following:

(*b*) was not, by reason of a statutory provision other than paragraph 149(1)(*t*), exempt from tax under this Part;

(4) Subsections (1) and (2) apply to elections in respect of capital dividends that become payable after 1997.

(5) Subsection (3) applies in respect of taxation years that end after 1999.

38.1 The portion of paragraph 94(1)(*c*) of the French version of the Act before subparagraph (i) is replaced by the following:

c) lorsque le montant du revenu ou du capital de la fiducie à distribuer à un moment donné à un bénéficiaire de la fiducie est fonction de l'exercice ou de l'absence d'exercice, par une personne, d'un pouvoir discrétionnaire :

40. (1) Section 96 of the Act is amended by adding the following after subsection (1):

Income allocation to former member

(1.01) If, at any time in a fiscal period of a partnership, a taxpayer ceases to be a member of the partnership

(*a*) for the purposes of subsection (1) and sections 34.1, 34.2, 101, 103 and 249.1, and notwithstanding paragraph 98.1(1)(*d*), the taxpayer is deemed to be a member of the partnership at the end of the fiscal period; and

(*b*) for the purposes of the application of paragraph (2.1)(*b*) and subparagraphs 53(1)(*e*)(i) and (2)(*c*)(i) to the taxpayer, the fiscal period of the partnership is deemed to end

(i) immediately before the time at which the taxpayer is deemed by subsection 70(5) to have disposed of the interest in the partnership, where the taxpayer ceased to be a member of the partnership because of the taxpayer's death, and

(ii) immediately before the time that is immediately before the time that the taxpayer ceased to be a member of the partnership, in any other case.

(2) Paragraph 96(2.4)(*a*) of the English version of the Act is replaced by the following:

(*a*) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions, from misconduct or from fault of another member of the partnership or an employee, an agent or a representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership);

(3) Subsection (1) applies in respect of a taxpayer

(*a*) in the case where the taxpayer ceases to be a member of a partnership because of the taxpayer's death, to the 2003 and subsequent taxation years; and

(*b*) in any other case, to the 1995 and subsequent taxation years.

(4) Subsection (2) applies after June 20, 2001.

(5) If a taxpayer, who is a member of a partnership at the end of a particular fiscal period, of the partnership, that ends in the taxpayer's 2000 taxation year, so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to,

(*a*) subsection 96(1.7) of the *Income Tax Act* does not apply to the taxpayer's 2000 taxation year;

(*b*) the taxpayer is deemed to have a capital gain, a capital loss or a business investment loss in respect of the partnership for the particular fiscal period equal to the amount of the taxable capital gain, the allowable capital loss or the allowable business investment loss in respect of the partnership for the particular fiscal period, as the case may be, multiplied by the reciprocal of the fraction in paragraph 38(*a*) of the *Income Tax Act* that applies to the partnership for the particular fiscal period;

(*c*) the amount of a capital gain, a capital loss or a business investment loss determined under paragraph (*b*) is deemed to be a capital gain, a capital loss or a business investment loss, as the case may be, of the taxpayer from a disposition of a capital property on the day that the particular fiscal period ends; and

(*d*) except as provided by this subsection, no amount shall be included in computing the taxpayer's taxable capital gains, allowable capital losses and allowable business investment losses in respect of the taxable capital gains, allowable capital losses and allowable business investment losses of the partnership for the particular fiscal period.

41. (1) Section 100 of the Act is amended by adding the following after subsection (4):

Replacement of partnership capital

(5) A taxpayer who pays an amount at any time in a taxation year is deemed to have a capital loss from a disposition of property for the year if

(*a*) the taxpayer disposed of an interest in a partnership before that time or, because of subsection (3), acquired before that time a right to receive property of a partnership;

(*b*) that time is after the disposition or acquisition, as the case may be;

(*c*) the amount would have been described in subparagraph 53(1)(*e*)(iv) had the taxpayer been a member of the partnership at that time; and

(*d*) the amount is paid pursuant to a legal obligation of the taxpayer to pay the amount.

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

42. (1) The portion of subsection 104(1.1) of the Act before paragraph (*a*) is replaced by the following:

Restricted meaning of "beneficiary"

(1.1) Notwithstanding subsection 248(25), for the purposes of subsection (1), paragraph (4)(*a*.4), subparagraph 73(1.02)(*b*)(ii) and paragraph 107.4(1)(*e*), a person or partnership is deemed not to be a beneficiary under a trust at a particular time if the person or partnership is beneficially interested in the trust at the particular time solely because of

(2) Paragraph 104(4)(*a*.2) of the French version of the Act is replaced by the following:

a.2) lorsque la fiducie effectue une distribution à un bénéficiaire au titre de la participation de celui-ci à son capital, qu'il est raisonnable de conclure que la distribution a été financée par une dette de la fiducie et que l'une des raisons pour lesquelles la dette a été contractée était d'éviter des impôts payables par ailleurs en vertu de la présente partie par suite du décès d'un particulier, le jour où la distribution est effectuée (déterminé comme si, pour la fiducie, la fin d'un jour correspondait au moment immédiatement après celui où elle distribue un bien à un bénéficiaire au titre de la participation de celui-ci à son capital);

(3) Paragraph 104(5.3)(*b*.1) of the French version of the Act is replaced by the following:

b.1) dans le cas où la fiducie a présenté le formulaire avant mars 1995, l'alinéa *b*) ne s'applique pas aux distributions qu'elle effectue après février 1995;

(4) Subsection 104(19) of the Act is replaced by the following:

Designation in respect of taxable dividends

(19) A portion of a taxable dividend received by a trust, in a particular taxation year of the trust, on a share of the capital stock of a taxable Canadian corporation is, for the purposes of this Act other than Part XIII, deemed to be a taxable dividend on the share received by a taxpayer, in the taxpayer's taxation year in which the particular taxation year ends, and is, for the purposes of paragraphs 82(1)(*b*) and 107(1)(*c*) and (*d*) and section 112, deemed not to have been received by the trust, if

(*a*) an amount equal to that portion

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of subsection (13) or (14) or section 105, was included in computing the income for that taxation year of the taxpayer;

(*b*) the taxpayer is in the particular taxation year a beneficiary under the trust;

(*c*) the trust is, throughout the particular taxation year, resident in Canada; and

(*d*) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of any taxpayer in the trust's return of income under this Part for the particular taxation year is not greater than the total of all amounts each of which is the amount of a taxable dividend, received by the trust in the particular taxation year, on a share of the capital stock of a taxable Canadian corporation.

(5) Subsection 104(21) of the Act is replaced by the following:

Designation in respect of taxable capital gains

(21) For the purposes of sections 3 and 111, except as they apply for the purposes of section 110.6, an amount in respect of a trust's net taxable capital gains for a particular taxation year of the trust is deemed to be a taxable capital gain, for the taxation year of a taxpayer in which the particular taxation year ends, from the disposition by the taxpayer of capital property if

(*a*) the amount

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of subsection (13) or (14) or section 105, was included in computing the income for that taxation year of the taxpayer;

(*b*) the taxpayer is

(i) in the particular taxation year, a beneficiary under the trust, and

(ii) resident in Canada, unless the trust is, throughout the particular taxation year, a mutual fund trust;

(*c*) the trust is, throughout the particular taxation year, resident in Canada; and (*d*) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of any taxpayer in the trust's return of income under this Part for the particular taxation year is not greater than the trust's net taxable capital gains for the particular taxation year.

(6) Paragraph 104(21.6)(*g*) of the Act is replaced by the following:

(*f*.1) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended after October 17, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year and in the period that began after February 27, 2000 and ended before October 18, 2000;

(*g*) if the deemed gains are in respect of capital gains of the trust from dispositions of property after February 27, 2000 and before October 17, 2000 and the taxation year of the taxpayer began after February 27, 2000 and ended before October 18, 2000, the deemed gains are deemed to be a capital gain of the taxpayer from the disposition by the taxpayer of capital property in the taxpayer's taxation year; and

(7) Subsection 104(22) of the Act is replaced by the following:

Designation in respect of foreign source income

(22) For the purposes of this subsection, subsection (22.1) and section 126, an amount in respect of a trust's income for a particular taxation year of the trust from a source in a country other than Canada is deemed to be income of a taxpayer, for the taxation year of the taxpayer in which the particular taxation year ends, from that source if

(*a*) the amount

(i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of subsection (13) or (14), was included in computing the income for that taxation year of the taxpayer;

(*b*) the taxpayer is in the particular taxation year a beneficiary under the trust;

(*c*) the trust is, throughout the particular taxation year, resident in Canada; and

(*d*) the total of all amounts each of which is an amount designated, under this subsection in respect of that source, by the trust in respect of any taxpayer in the trust's return of income under this Part for the particular taxation year is not greater than the trust's income for the particular taxation year from that source.

(8) Subsection (1) applies to the 1998 and subsequent taxation years.

(9) Subsections (4), (5) and (7) apply to taxation years that end after ANNOUNCEMENT DATE.

(10) Paragraph 104(21.6)(*f*.1) of the Act, as enacted by subsection (6), applies to taxation years that end after February 27, 2000.

(11) Paragraph 104(21.6)(*g*) of the Act, as enacted by subsection (6), applies to trust taxation years that end after December 20, 2002.

42.1 Subsection 106(3) of the French version of the Act is replaced by the following:

Produit de disposition d'une participation au revenu

(3) Il est entendu que la fiducie qui, à un moment donné, distribue un de ses biens à un contribuable qui était un de ses bénéficiaires, en règlement total ou partiel de la participation du contribuable au revenu de la fiducie, est réputée avoir disposé du bien pour un produit égal à la juste valeur marchande du bien à ce moment.

43. (1) Subsection 107(1) of the Act is amended by striking out the word "and" at the end of paragraph (*c*), by adding the word "and" at the end of paragraph (*d*) and by adding the following after paragraph (*d*):

(*e*) if the capital interest is not a capital property of the taxpayer, notwithstanding the definition "cost amount" in subsection 108(1), its cost amount is deemed to be the amount, if any, by which

(i) the amount that would, if this Act were read without reference to this paragraph and the definition "cost amount" in subsection 108(1), be its cost amount,

exceeds

(ii) the total of all amounts, each of which is an amount in respect of the capital interest that has become payable to the taxpayer before the disposition and that would be described in subparagraph 53(2)(*h*)(i.1) if that subparagraph were read without reference to its subclause (B)(I).

(2) Section 107 of the Act is amended by adding the following after subsection 107(1.1):

Deemed fair market value - non-capital property

(1.2) For the purpose of section 10, the fair market value at any time of a capital interest in a trust is deemed to be equal to the amount that is the total of

(*a*) the amount that would, but for this subsection, be its fair market value at that time, and

(*b*) the total of all amounts, each of which is an amount that would be described, in respect of the capital interest, in subparagraph 53(2)(*h*)(i.1) if that paragraph were read without reference to its subclause (B)(I), that has become payable to the taxpayer before that time.

(3) The portion of subsection 107(2) of the French version of the Act before paragraph (*a*) is replaced by the following:

Distribution par une fiducie personnelle

(2) Sous réserve des paragraphes (2.001), (2.002) et (4) à (5), les règles suivantes s'appliquent dans le cas où, à un moment donné, une fiducie personnelle ou une fiducie visée par règlement effectue, au profit d'un contribuable bénéficiaire, une distribution de ses biens qui donne lieu à la disposition de la totalité ou d'une partie de la participation du contribuable au capital de la fiducie :

(4) Subparagraph 107(2)(*b*.1)(iii) of the Act is replaced by following:

(iii) in any other case, 50%;

(5) The portion of paragraph 107(2)(*c*) of the Act before subparagraph (i) is replaced by the following:

(*c*) the taxpayer's proceeds of disposition of the capital interest in the trust (or of the part of it) disposed of by the taxpayer on the distribution are deemed to be equal to the amount, if any, by which

(6) The portion of paragraph 107(2)(*d*) of the French version of the Act before subparagraph (i) is replaced by the following:

d) lorsque les biens ainsi distribués étaient des biens amortissables de la fiducie, appartenant à une catégorie prescrite, et que le montant du coût en capital de ces biens, supporté par la fiducie, dépasse le coût que le contribuable est réputé, en vertu du présent article, avoir supporté pour les acquérir, pour l'application des articles 13 et 20 et des dispositions réglementaires prises en vertu de l'alinéa 20(1)*a*) :

(7) Subparagraph 107(2)(*d*.1)(iii) of the Act is replaced by the following:

(iii) the property was deemed by paragraph 51(1)(*f*), 85(1)(*i*) or 85.1(1)(*a*), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(*c*) to be taxable Canadian property of the trust; and

(8) The portion of paragraph 107(2)(*f*) of the French version of the Act before subparagraph (i) is replaced by the following:

f) lorsque les biens ainsi distribués étaient des immobilisations admissibles de la fiducie au titre de son entreprise :

(9) The portion of subparagraph 107(2)(*f*)(ii) of the French version of the Act after the formula is replaced by the following:

où :

A représente le montant calculé selon cet élément Q au titre de l'entreprise de la fiducie immédiatement avant la distribution;

B la juste valeur marchande, immédiatement avant la distribution, des biens ainsi distribués;

C la juste valeur marchande, immédiatement avant la distribution, de l'ensemble des immobilisations admissibles de la fiducie au titre de l'entreprise.

(10) Subsection 107(2.001) of the French version of the Act is replaced by the following:

Roulement — choix d'une fiducie

(2.001) Lorsqu'une fiducie distribue un bien à l'un de ses bénéficiaires en règlement total ou partiel de la participation de celui-ci à son capital, le paragraphe (2) ne s'applique pas à la distribution si la fiducie en fait le choix dans un formulaire prescrit présenté au ministre avec sa déclaration de revenu pour son année d'imposition où le bien est distribué et si l'un des faits suivants se vérifie :

a) la fiducie réside au Canada au moment de la distribution;

b) le bien est un bien canadien imposable;

c) le bien est soit une immobilisation utilisée dans le cadre d'une entreprise que la fiducie exploite par l'entremise d'un établissement stable (au sens du *Règlement de l'impôt sur le revenu*) au Canada immédiatement avant la distribution, soit une immobilisation admissible au titre d'une telle entreprise, soit un bien à porter à l'inventaire d'une telle entreprise.

(11) The portion of subsection 107(2.002) of the French version of the Act before paragraph (*b*) is replaced by the following:

Roulement — choix d'un bénéficiaire

(2.002) Lorsqu'une fiducie non-résidente distribue un bien (sauf celui visé aux alinéas (2.001)*b*) ou *c*)) à l'un de ses bénéficiaires en règlement total ou partiel de la participation de celui-ci à son capital, les règles suivantes s'appliquent si le bénéficiaire en fait le choix en vertu du présent paragraphe dans un formulaire prescrit présenté au ministre avec sa déclaration de revenu pour son année d'imposition où le bien est distribué :

a) le paragraphe (2) ne s'applique pas à la distribution;

(12) The portion of subsection 107(2.01) of the French version of the Act before paragraph (*a*) is replaced by the following:

Distribution de résidence principale

(2.01) Lorsqu'une fiducie personnelle distribue à un moment donné, à un contribuable dans les circonstances visées au paragraphe (2), un bien qui serait sa résidence principale, au sens de l'article 54, pour une année d'imposition si elle l'avait désigné comme telle en application de l'alinéa *c*.1) de la définition de « résidence principale » à cet article, les présomptions suivantes s'appliquent si la fiducie en fait le choix dans sa déclaration de revenu pour l'année d'imposition qui comprend ce moment :

(13) The portion of subsection 107(2.1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Autres distributions

(2.1) Lorsque, à un moment donné, une fiducie effectue, au profit d'un de ses bénéficiaires, une distribution de bien qui donnerait lieu à la disposition de la totalité ou d'une partie de la participation du bénéficiaire au capital de la fiducie (laquelle participation ou partie de participation est appelée « ancienne participation » au présent paragraphe) s'il était fait abstraction des alinéas *h*) et *i*) de la définition de « disposition » au paragraphe 248(1), et que les règles énoncées au paragraphe (2) et à l'article 132.2 ne s'appliquent pas à la distribution, les règles suivantes s'appliquent :

(14) The portion of paragraph 107(2.1)(*c*) of the French version of the Act before subparagraph (i) is replaced by the following:

c) sous réserve de l'alinéa *e*), le produit de disposition, pour le bénéficiaire, de la partie de l'ancienne participation dont il a disposé au moment de la distribution est réputé égal à l'excédent éventuel :

(15) The portion of subparagraph 107(2.1)(*d*)(iii) of the French version of the Act before clause (B) is replaced by the following:

(iii) le produit de disposition, pour le bénéficiaire, de la partie de l'ancienne participation dont il a disposé au moment de la distribution est réputé égal à l'excédent éventuel de la juste valeur marchande du bien sur le total des montants suivants :

(A) la partie du montant de la distribution qui est un paiement auquel s'applique l'alinéa *h*) ou *i*) de la définition de « disposition » au paragraphe 248(1),

(16) Paragraph 107(2.1)(*e*) of the French version of the Act is replaced by the following:

e) lorsque la fiducie est une fiducie de fonds commun de placement, que la distribution est effectuée au cours d'une de ses années d'imposition qui est antérieure à son année d'imposition 2003, qu'elle a fait, pour l'année, le choix prévu au paragraphe (2.11) et qu'elle en fait le choix relativement à la distribution dans le formulaire prescrit produit avec sa déclaration de revenu pour l'année :

(i) il n'est pas tenu compte de l'alinéa *c*),

(ii) le produit de disposition, pour le bénéficiaire, de la partie de l'ancienne participation dont il a disposé lors de la distribution est réputé égal au montant déterminé selon l'alinéa *a*).

(17) Subsection 107(2.11) of the French version of the Act is replaced by the following:

Gains non distribués aux bénéficiaires

(2.11) Lorsqu'une fiducie effectue une ou plusieurs distributions de biens au cours d'une année d'imposition dans les circonstances visées au paragraphe (2.1) (ou, dans le cas d'un bien distribué après le 1er octobre 1996 et avant 2000, dans les circonstances visées au paragraphe (5)), les règles suivantes s'appliquent :

a) si la fiducie réside au Canada au moment de chacune des distributions, son revenu pour l'année (déterminé compte non tenu du paragraphe 104(6)) est calculé, pour l'application des paragraphes 104(6) et (13), sans égard à celles de ces distributions qui ont été effectuées au profit de personnes non-résidentes (y compris les sociétés de personnes autres que les sociétés de personnes canadiennes), si la fiducie en fait le choix dans un formulaire prescrit produit avec sa déclaration de revenu pour l'année ou pour une année d'imposition antérieure;

b) si la fiducie réside au Canada au moment de chacune de ces distributions, son revenu pour l'année (déterminé compte non tenu du paragraphe 104(6)) est calculé, pour l'application des paragraphes 104(6) et (13), sans égard à l'ensemble de ces distributions, si la fiducie en fait le choix dans un formulaire prescrit produit avec sa déclaration de revenu pour l'année ou pour une année d'imposition antérieure.

(18) The portion of subsection 107(2.2) of the French version of the Act before paragraph (*a*) is replaced by the following:

Entité intermédiaire

(2.2) Lorsque, à un moment antérieur à 2005, une fiducie visée aux alinéas *h*), *i*) ou *j*) de la définition de « entité intermédiaire » au paragraphe 39.1(1) distribue des biens à l'un de ses bénéficiaires en règlement de tout ou partie des participations de celui-ci dans la fiducie et que le bénéficiaire présente au ministre, au plus tard à la date d'échéance de production qui lui est applicable pour son année d'imposition qui comprend ce moment, un choix concernant les biens sur le formulaire prescrit, le moins élevé des montants suivants est à inclure dans le coût, pour le bénéficiaire, d'un bien (sauf de l'argent) qu'il a reçu dans le cadre de la distribution :

(19) The portion of subsection 107(4) of the French version of the Act before paragraph (*a*) is replaced by the following:

Fiducie en faveur de l'époux, du conjoint de fait ou de soi-même

(4) Si les conditions ci-après sont réunies, le paragraphe (2.1), mais non le paragraphe (2), s'applique au bien qu'une fiducie visée à l'alinéa 104(4)*a*) distribue à un bénéficiaire :

(20) Paragraph 107(4)(*b*) of the French version of the Act is replaced by the following:

b) le contribuable, l'époux ou le conjoint de fait mentionné au sous-alinéa *a*)(i), (ii) ou (iii), selon le cas, est vivant le jour de la distribution.

(21) The portion of subsection 107(4.1) of the French version of the Act before paragraph (*b*) is replaced by the following:

Cas d'application du par. 75(2) à une fiducie

(4.1) Si les conditions ci-après sont réunies, le paragraphe (2.1), mais non le paragraphe (2), s'applique à la distribution d'un bien d'une fiducie personnelle donnée ou une fiducie donnée visée par règlement, effectuée par la fiducie donnée à un contribuable bénéficiaire de cette fiducie :

a) la distribution a été effectuée en règlement de la totalité ou d'une partie de la participation du contribuable au capital de la fiducie donnée;

(22) Subparagraph 107(4.1)(*b*)(ii) of the French version of the Act is replaced by the following:

(ii) soit d'une fiducie comptant parmi ses biens un bien qui, par suite d'une ou de plusieurs dispositions auxquelles le paragraphe

107.4(3) s'est appliqué, est devenu un bien de la fiducie donnée, lequel bien, après le moment donné et avant la distribution, n'a pas fait l'objet d'une disposition pour un produit de disposition égal à sa juste valeur marchande au moment de la disposition;

(23) Paragraph 107(4.1)(*d*) of the French version of the Act is replaced by the following:

d) la personne visée au sous-alinéa *c*)(i) existait au moment de la distribution du bien.

(24) Subsection 107(5) of the Act is replaced by the following:

Distribution of property received on qualifying disposition

(4.2) Subsection (2.1) applies (and subsection (2) does not apply) at any time to property distributed after December 20, 2002 to a beneficiary by a personal trust or a trust prescribed for the purpose of subsection (2), if

(*a*) at a particular time before December 21, 2002 there was a qualifying disposition (within the meaning assigned by subsection 107.4(1)) of the property, or of other property for which the property is substituted, by a particular partnership or a particular corporation, as the case may be, to a trust; and

(*b*) the beneficiary is neither the particular partnership nor the particular corporation.

Distribution to non-resident

(5) Subsection (2.1) applies (and subsection (2) does not apply) in respect of a distribution of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(*b*)(i) to (iii)) by a trust to a non-resident taxpayer (including a partnership other than a Canadian partnership) in satisfaction of all or part of the taxpayer's capital interest in the trust.

(25) The portion of subsection 107(5.1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Intérêts sur acomptes provisionnels

(5.1) Dans le cas où, par le seul effet du paragraphe (5), les alinéas (2)*a*) à *c*) ne s'appliquent pas à une distribution de biens canadiens imposables effectuée par une fiducie au cours d'une année d'imposition, le total des impôts payables par la fiducie en vertu de la présente partie et de la partie I.1 pour l'année est réputé, pour l'application des articles 155, 156 et 156.1, des paragraphes 161(2), (4) et (4.01) et des dispositions réglementaires prises en application de ces articles et paragraphes, correspondre au moins élevé des montants suivants :

(26) Paragraph 107(5.1)(*b*) of the French version of the Act is replaced by the following:

b) le montant qui serait déterminé selon l'alinéa *a*) si le paragraphe (5) ne s'appliquait pas à chaque distribution, effectuée au cours de l'année, de biens canadiens imposables auxquels les règles énoncées au paragraphe (2) ne s'appliquent pas par le seul effet du paragraphe (5).

(27) Subsections (1) and (2) apply

(*a*) to dispositions that occur, and valuations made, after 2001 in respect of a qualified trust unit, as defined in subsection 260(1) of the Act; and

(*b*) after ANNOUNCEMENT DATE, in any other case except that, subject to paragraph (*a*), subsection (1) does not apply to a disposition of property by a taxpayer after ANNOUNCEMENT DATE and before 2005 pursuant to an agreement in writing made by the taxpayer on or before ANNOUNCEMENT DATE.

(28) Subsection (4) and subsection 107(4.2) of the Act, as enacted by subsection (24), apply to distributions made after December 20, 2002.

(29) Subsection (5) applies to distributions made after 1999.

(30) Subsection (7) applies in determining after October 1, 1996 whether property is taxable Canadian property.

(31) Subsection 107(5) of the Act, as enacted by subsection (24), applies to distributions made after ANNOUNCEMENT DATE.

43.1 The portion of section 107.1 of the French version of the Act before paragraph (*a*) is replaced by the following:

Distribution par une fiducie d'employés ou un régime de prestations aux employés

107.1 Lorsque, à un moment donné, des biens d'une fiducie d'employés, d'une fiducie régie par un régime de prestations aux employés ou d'une fiducie visée à l'alinéa *a*.1) de la définition de « fiducie » au paragraphe 108(1) ont été distribués par la fiducie à un contribuable qui en était un bénéficiaire, en règlement de la totalité ou d'une partie de sa participation dans la fiducie, les régles suivantes s'appliquent :

43.2 (1) The portion of section 107.2 of the French version of the Act before paragraph (*a*) is replaced by the following:

Montant provenant d'une fiducie de convention de retraite

107.2 Pour l'application de la présente partie et de la partie XI.3, dans le cas où, à un moment donné, une fiducie régie par une convention de retraite distribue un de ses biens à un contribuable bénéficiaire de la fiducie, en règlement de la totalité ou d'une partie de la participation de celui-ci dans la fiducie, les règles suivantes s'appliquent :

(2) Paragraph 107.2(*b*) of the French version of the Act is replaced by the following:

b) la fiducie est réputée verser au contribuable, au titre d'une distribution, un montant égal à cette juste valeur marchande;

44. (1) The portion of subsection 107.4(1) of the Act before paragraph (*a*) is replaced by the following:

Qualifying disposition

107.4 (1) In this section, a "qualifying disposition" of a property means a disposition of the property before December 21, 2002 by a person or partnership, and a disposition of property after December 20, 2002 by an individual, (which person, partnership or individual is referred to in this subsection as the "contributor") as a result of a transfer of the property to a particular trust where

(2) Paragraph 107.4(1)(*c*) of the Act is replaced by the following:

(*c*) the trust is resident in Canada at the time of the transfer;

(3) Paragraph 107.4(1)(*d*) of the Act is repealed.

(4) Paragraph 107.4(3)(*f*) of the Act is replaced by the following:

(*f*) if the property was deemed to be taxable Canadian property of the transferor by this paragraph or paragraph 44.1(2)(*c*), 51(1)(*f*), 85(1)(*i*) or 85.1(1)(*a*), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(*c*) or 107(2)(*d*.1), the property is deemed to be taxable Canadian property of the transferee trust;

(5) Subparagraphs 107.4(1)(*g*)(ii) and (iii) of the French version of the Act are replaced by the following:

(ii) celle commençant après le 17 décembre 1999 et comprenant la disposition de la totalité ou d'une partie d'une participation au capital ou d'une participation au revenu d'une fiducie personnelle, sauf une disposition effectuée uniquement par suite de la distribution d'un bien, d'une fiducie à une personne ou à une société de personnes, en règlement de la totalité ou d'une partie de cette participation,

(iii) celle commençant après le 5 juin 2000 et comprenant le transfert d'un bien à la fiducie donnée, effectué en contrepartie de l'acquisition d'une participation au capital de cette fiducie, s'il est raisonnable de considérer que celle-ci a reçu le bien en vue de financer une distribution (sauf celle qui correspond au produit de disposition d'une participation au capital de la fiducie);

(6) Subsection (1) and (3) are deemed to have come into force on December 20, 2002.

(7) Subsection (2) applies to dispositions that occur after ANNOUNCEMENT DATE.

(8) Subsection (4) applies

(*a*) to dispositions that occur after December 23, 1998; and

(*b*) in respect of the 1996 and subsequent taxation years, to transfers of capital property that occurred before December 24, 1998.

45. (1) The portion of the definition "testamentary trust" in subsection 108(1) of the Act before paragraph (*a*) is replaced by the following:

"testamentary trust"
« fiducie
testamentaire »

"testamentary trust", in a taxation year, means a trust that arose on and as a consequence of the death of an individual (including a trust referred to in subsection 248(9.1)), other than

(2) The definition "testamentary trust" in subsection 108(1) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) a trust that, at any time after December 20, 2002 and before the end of the taxation year, incurs a debt or any other obligation owed to, or guaranteed by, a beneficiary or any other person or partnership (which beneficiary, person or partnership is referred to in this paragraph as the "specified party") with whom any beneficiary of the trust does not deal at arm's length, other than a debt or other obligation

(i) incurred by the trust in satisfaction of the specified party's right as a beneficiary under the trust

(A) to enforce payment of an amount of the trust's income or capital gains payable before that time by the trust to the specified party, or

(B) to otherwise receive any part of the capital of the trust,

(ii) owed to the specified party, if the debt or other obligation arose because of a service (for greater certainty, not including any transfer or loan of property) rendered by the specified party to, for or on behalf of the trust, or

(iii) owed to the specified party, if

(A) the debt or other obligation arose because of a payment made by the specified party for or on behalf of the trust,

(B) in exchange for the payment the trust transfers a property to the specified party within 12 months after the payment was made (or, where written application has been made to the Minister by the trust within that 12 months, within any longer period that the Minister considers reasonable in the circumstances), and

(C) it is reasonable to conclude that the specified party would have been willing to make the payment if the specified party dealt at arm's length with the trust;

(3) The portion of the definition "trust" in subsection 108(1) of the Act after paragraph (*e*.1) and before paragraph (*f*) is replaced by the following:

and, in applying subsections 104(4), (5), (5.2), (12), (14) and (15) at any time, does not include

(4) Paragraph (*a*) of the definition "coût indiqué" in subsection 108(1) of the French version of the Act is replaced by the following:

a) dans le cas où de l'argent ou un autre bien de la fiducie a été distribué par celle-ci au contribuable en règlement de tout ou partie de sa participation au capital (lors de la liquidation de la fiducie ou autrement), du total des montants suivants :

(i) l'argent ainsi distribué,

(ii) les sommes représentant chacune le coût indiqué pour la fiducie, immédiatement avant la distribution, de chacun de ces autres biens,

(5) Subparagraphs (*g*)(v) and (vi) of the definition "fiducie" in subsection 108(1) of the French version of the Act are replaced by the following:

(v) la fiducie dont les modalités prévoient, à ce moment, que la totalité ou une partie de la participation d'une personne dans la fiducie doit prendre fin par rapport à une période (y compris celle déterminée par rapport au décès de la personne), autrement que par l'effet des modalités de la fiducie selon lesquelles une participation dans la fiducie doit prendre fin par suite de la distribution à la personne (ou à sa succession) d'un bien de la fiducie, si la juste valeur marchande du bien à distribuer doit être proportionnelle à celle de cette participation immédiatement avant la distribution,

(vi) la fiducie qui, avant ce moment et après le 17 décembre 1999, a effectué une distribution en faveur d'un bénéficiaire au titre de la participation de celui-ci à son capital, s'il est raisonnable de considérer que la distribution a été financée par une dette de la fiducie et si l'une des raisons pour lesquelles la dette a été contractée était d'éviter des impôts payables par ailleurs en vertu de la présente partie par suite du décès d'un particulier.

(6) The definition "montant de réduction admissible" in subsection 108(1) of the French version of the Act is replaced by the following:

« montant de réduction admissible »
"eligible offset"

« montant de réduction admissible » En ce qui concerne un contribuable à un moment donné relativement à la totalité ou à une partie de sa participation au capital d'une fiducie, toute partie de dette ou d'obligation qui est prise en charge par le contribuable et qu'il est raisonnable de considérer comme étant imputable à un bien distribué à ce moment en règlement de la participation ou de la partie de participation, si la distribution est conditionnelle à la prise en charge par le contribuable de la partie de dette ou d'obligation.

(7) Subsections (1) and (2) apply to trust taxation years that end after December 20, 2002.

(8) Subsection (3) applies to the 1998 and subsequent taxation years.

46. (1) Paragraph 110(1)(*k*) of the Act is replaced by the following:

Part VI.1 tax

(*k*) 3 times the tax payable under subsection 191.1(1) by the taxpayer for the year.

(2) Subsection 110(1.7) of the Act is replaced by the following:

Reduction in exercise price

(1.7) If the amount payable by a taxpayer to acquire securities under an agreement referred to in subsection 7(1) is reduced at any particular time and the conditions in subsection (1.8) are satisfied in respect of the reduction, (*a*) the rights (referred to in this subsection and subsection (1.8) as the "old rights") that the taxpayer had under the agreement immediately before the particular time are deemed to have been disposed of by the taxpayer immediately before the particular time;

(*b*) the rights (referred to in this subsection and subsection (1.8) as the "new rights") that the taxpayer has under the agreement at the particular time are deemed to be acquired by the taxpayer at the particular time; and

(*c*) the taxpayer is deemed to receive the new rights as consideration for the disposition of the old rights.

Conditions for subsection (1.7) to apply

(1.8) The following are the conditions in respect of the reduction:

(*a*) that the taxpayer would not be entitled to a deduction under paragraph (1)(*d*) if the taxpayer acquired securities under the agreement immediately after the particular time and this section were read without reference to subsection (1.7); and

(*b*) that the taxpayer would be entitled to a deduction under paragraph (1)(*d*) if the taxpayer

(i) disposed of the old rights immediately before the particular time,

(ii) acquired the new rights at the particular time as consideration for the disposition, and

(iii) acquired securities under the agreement immediately after the particular time.

(3) Subsection (1) applies to the 2003 and subsequent taxation years.

(4) Subsection (2) applies to reductions that occur after 1998.

(5) An election by a taxpayer under subsection 7(10) of the Act to have subsection 7(8) of the Act apply is deemed to have been filed in a timely manner if

(*a*) it is filed on or before the 60th day after this Act is assented to;

(*b*) it is in respect of a security acquired by the taxpayer before this Act is assented to;

(*c*) the taxpayer is entitled to a deduction under paragraph 110(1)(*d*) of the Act in respect of the acquisition; and

(*d*) the taxpayer would not have been so entitled if subsection 110(1.7) of the Act, as enacted by subsection (2), did not apply.

47. (1) The portion of paragraph 110.1(1)(*a*) of the Act before subparagraph (i) is replaced by the following:

Charitable gifts

(*a*) the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (*b*), (*c*) or (*d*)) made by the corporation in the year or in any of the five preceding taxation years to

(2) Paragraph 110.1(1)(*a*) of the Act is amended by adding the following after subparagraph (iv):

(iv.1) a municipal or public body performing a function of government in Canada,

(3) The portion of paragraph 110.1(1)(*b*) of the Act before subparagraph (i) is replaced by the following:

Gifts to Her Majesty

(*b*) the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (*c*) or (*d*)) made by the corporation to Her Majesty in right of Canada or of a province

(4) Paragraphs 110.1(1)(*c*) and (*d*) of the Act are replaced by the following:

Gifts to institutions

(*c*) the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (*d*)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(*b*) and (*c*) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year or in any of the five preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object; and

Ecological gifts

(*d*) the total of all amounts each of which is the eligible amount of a gift of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) if

(i) the fair market value of the gift is certified by the Minister of the Environment,

(ii) the land is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or that person, important to the preservation of Canada's environmental heritage, and

(iii) the gift was made by the corporation in the year or in any of the five preceding taxation years to

(A) Her Majesty in right of Canada or of a province,

(B) a municipality in Canada,

(C) a municipal or public body performing a function of government in Canada, or

(D) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or that person in respect of the gift.

(5) The portion of subsection 110.1(2) of the Act before paragraph (*a*) is replaced by the following:

Proof of gift

(2) An eligible amount of a gift shall not be included for the purpose of determining a deduction under subsection (1) unless the making of the gift is evidenced by filing with the Minister

(6) Subsection 110.1(3) of the Act is replaced by the following:

Where subsection (3) applies

(2.1) Subsection (3) applies in circumstances where

(*a*) a corporation makes a gift at any time of

(i) capital property to a donee described in paragraph 110.1(1)(*a*), (*b*) or (*d*), or

(ii) in the case of a corporation not resident in Canada, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(*b*) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the corporation that includes that time (determined without reference to proceeds of disposition designated in respect of the property under subsection (3)), and the adjusted cost base to the corporation of the property immediately before that time, and

(ii) in any other case, the adjusted cost base to the corporation of the property immediately before that time.

Gifts of capital property

(3) If this subsection applies in respect of a gift by a corporation of property, and the corporation designates an amount in respect of the gift in its return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be its proceeds of disposition of the property and, for the purpose of subsection 248(30), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

(*a*) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and

(*b*) the amount determined under subparagraph (2.1)(*b*)(i) or (ii), as the case may be, in respect of the property.

(7) Subsection 110.1(4) of the Act is replaced by the following:

Gifts made by partnership

(4) If at the end of a fiscal period of a partnership a corporation is a member of the partnership, its share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the

partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the corporation in its taxation year in which the fiscal period of the partnership ends.

(8) The portion of paragraph 110.1(5)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) where the gift is a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude, the greater of

(9) Subsections (1) and (3) to (5), (7) and (8) apply to gifts made after December 20, 2002.

(10) Subsection (2) applies to gifts made after May 8, 2000.

(11) For gifts made after May 8, 2000 and before December 21, 2002, subparagraph 110.1(1)(*d*)(i) of the Act is to be read as follows:

(i) Her Majesty in right of Canada or of a province, a municipality in Canada or a municipal or public body performing a function of government in Canada, or

(12) Subsection (6) applies to gifts made after 1999 except that, for gifts made after 1999 and on or before December 20, 2002, the expression "subsection 248(30)" in subsection 110.1(3) of the Act, as enacted by subsection (6), is to be read as "subsection (1)".

48. (1) Paragraph 110.6(7)(*b*) of the French version of the Act is replaced by the following:

b) soit dans laquelle une société ou une société de personnes acquiert un bien pour une contrepartie bien inférieure à sa juste valeur marchande au moment de l'acquisition, sauf si l'acquisition résulte d'une fusion ou d'une unification de sociétés, de la liquidation d'une société ou d'une société de personnes ou d'une distribution de biens d'une fiducie en règlement de tout ou partie d'une participation d'une société au capital de la fiducie.

(2) Subsection 110.6(14) of the Act is amended by adding the following after paragraph (*d*):

(*d*.1) a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership;

(3) Subsection (2) applies

(*a*) to dispositions that occur after December 20, 2002; and

(*b*) to dispositions made by a taxpayer after 1999, if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to.

49. (1) Subsection 111(1.1) of the Act is amended by striking out the word "and" at the end of paragraph (*a*), by adding the word "and" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*c*) the amount, if any, that the Minister determines to be reasonable in the circumstances, after considering the application of subsections 104(21.6), 130.1(4), 131(1) and 138.1(3.2) to the taxpayer for the particular year.

(2) The description of C in the definition "pre-1986 capital loss balance" in subsection 111(8) of the Act is replaced by the following:

C is the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years that ended before 1988 or begin after October 17, 2000.

(3) Subsections (1) and (2) apply to the 2000 and subsequent taxation years.

50. (1) The portion of subsection 116(5.2) of the Act before paragraph (*a*) is replaced by the following:

Certificates for dispositions

(5.2) If a non-resident person has, in respect of a disposition, or a proposed disposition, in a taxation year to a taxpayer of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is a taxable Canadian property, eligible capital property that is a taxable Canadian property or any interest in, or option in respect of, a property to which this subsection applies (whether or not that property exists),

(2) Paragraph 116(6)(*f*) of the Act is replaced by the following:

(*f*) property of an authorized foreign bank that carries on a Canadian banking business;

(3) Subsection (1) applies after December 23, 1998.

(4) Subsection (2) applies after June 27, 1999.

50.1 (1) The description of C in subparagraph (*a*)(ii) of the description of B in subsection 118(1) of the English version of the Act is replaced by the following:

C is the greater of $606 and the income of the individual's spouse or common-law partner for the year or, where the individual and the individual's spouse or common-law partner are living separate and apart at the end of the year because of a breakdown of their marriage or common-law partnership, the spouse's or common-law partner's income for the year while married or in a common-law partnership and not so separated.

(2) Paragraph (*a*) of the definition "pension income" in subsection 118(7) of the Act is amended by adding the following after subparagraph (iii):

(iii.1) a payment (other than a payment described in subparagraph (i)) payable on a periodic basis under a money purchase provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan,

(3) Subsection (1) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (1) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

(4) Subsection (2) applies to the 2004 and subsequent taxation years.

51. (1) The definition "total ecological gifts" in subsection 118.1(1) of the Act is replaced by the following:

"total ecological gifts"
« total des dons de biens écosensibles »

"total ecological gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition "total cultural gifts") of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) if

(*a*) the fair market value of the gift is certified by the Minister of the Environment,

(*b*) the land is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or that person, important to the preservation of Canada's environmental heritage, and

(*c*) the gift was made by the individual in the year or in any of the five preceding taxation years to

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a registered charity one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or that person in respect of the gift,

to the extent that those amounts were not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

(2) The portion of the definition "total charitable gifts" in subsection 118.1(1) of the Act before paragraph (*a*) is replaced by the following:

"total charitable gifts"
« total des dons de bienfaisance »

"total charitable gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition "total Crown gifts", "total cultural gifts" or "total ecological gifts") made by the individual in the year or in any of the five preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

(3) Paragraph (*d*) of the definition "total charitable gifts" in subsection 118.1(1) of the Act is replaced by the following:

(*d*) a municipality in Canada,

(*d*.1) a municipal or public body performing a function of government in Canada,

(4) The portion of the definition "total Crown gifts" in subsection 118.1(1) of the Act before paragraph (*a*) is replaced by the following:

"total Crown gifts"
« total des dons à l'État »

"total Crown gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift (other than a gift described in the definition "total cultural gifts" or "total ecological gifts") made by the individual in the year or in any of the five preceding taxation years to Her Majesty in right of Canada or of a province, to the extent that those amounts were

(5) The portion of the definition "total cultural gifts" in subsection 118.1(1) of the Act before paragraph (*a*) is replaced by the following:

"total cultural gifts"
« total des dons de biens culturels »

"total cultural gifts", in respect of an individual for a taxation year, means the total of all amounts each of which is the eligible amount of a gift

(6) The description of "B" in the formula in subparagraph (*a*)(iii) of the definition "total gifts" in subsection 118.1(1) is replaced by the following:

B is the total of all amounts, each of which is that proportion of the individual's taxable capital gain for the taxation year in respect of a gift made by the individual in the taxation year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift,

(7) The portion of subsection 118.1(2) of the Act before paragraph (*a*) is replaced by the following:

Proof of gift

(2) An eligible amount of a gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(8) Subsection 118.1(6) of the Act is replaced by the following:

Where subsection (6) applies

(5.4) Subsection (6) applies in circumstances where

(*a*) an individual

(i) makes a gift (by the individual's will or otherwise) at any time of capital property to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection (1), or

(ii) who is non-resident, makes a gift (by the individual's will or otherwise) at any time of real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(*b*) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the individual that includes that time (determined without reference to proceeds of disposition designated in respect of the property under subsection (6)), and the adjusted cost base to the individual of the property immediately before that time, and

(ii) in any other case, the adjusted cost base to the individual of the property immediately before that time.

Gifts of capital property

(6) If this subsection applies in respect of a gift by an individual of property, and the individual or the individual's legal representative designates an amount in respect of the gift in the individual's return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be the individual's proceeds of disposition of the property and, for the purpose of subsection 248(30), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

(*a*) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and

(*b*) the amount determined under subparagraph (5.4)(*b*)(i) or (ii), as the case may be, in respect of the property.

(9) Paragraph 118.1(7)(*b*) of the French version of the Act is replaced by the following:

b) le montant indiqué par le particulier ou par son représentant légal dans la déclaration de revenu du particulier produite conformément à l'article 150 pour l'année du don est réputé correspondre à la fois au produit de disposition de l'oeuvre d'art pour le particulier et, pour l'application du paragraphe 248(30), à la juste valeur marchande de l'oeuvre d'art; toutefois, il ne peut ni excéder la juste valeur marchande de l'oeuvre d'art, déterminée par ailleurs, ni être inférieur au plus élevé des montants suivants :

(i) le montant de l'avantage au titre du don,

(ii) le coût indiqué de l'oeuvre d'art pour le particulier.

(10) Paragraph 118.1(7)(*d*) of the English version of the Act is replaced by the following:

(*d*) the amount that the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made is deemed to be the individual's proceeds of disposition of the work of art and, for the purpose of subsection 248(30), the fair market value of the work of art, but the amount so designated may not exceed the fair market value otherwise determined of the work of art and may not be less than the greater of

(i) the amount of the advantage, if any, in respect of the gift, and,

(ii) the cost amount to the individual of the work of art.

(11) Paragraph 118.1(7.1)(*b*) of the French version of the Act is replaced by the following:

b) le particulier est réputé avoir reçu, au moment donné pour l'oeuvre d'art, un produit de disposition égal au coût indiqué de l'oeuvre d'art pour lui à ce moment ou, s'il est plus élevé, au montant de l'avantage au titre du don.

(12) Paragraph 118.1(7.1)(*d*) of the English version of the Act is replaced by the following:

(*d*) the individual is deemed to have received at the particular time proceeds of disposition in respect of the work of art equal to the greater of its cost amount to the individual at that time and the amount of the advantage, if any, in respect of the gift.

(13) Subsection 118.1(8) of the Act is replaced by the following:

Gifts made by partnership

(8) If at the end of a fiscal period of a partnership an individual is a member of the partnership, the individual's share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the individual in the individual's taxation year in which the fiscal period of the partnership ends.

(14) Paragraphs 118.1(13)(*b*) and (*c*) of the Act are replaced by the following:

(*b*) if the security ceases to be a non-qualifying security of the individual at a subsequent time that is within 60 months after the particular time and the donee has not disposed of the security at or before the subsequent time, the individual is deemed to have made a gift to the donee of property at the subsequent time and the fair market value of that property is deemed to be the lesser of the fair market value of the security at the subsequent time and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts or total Crown gifts for a taxation year;

(*c*) if the security is disposed of by the donee within 60 months after the particular time and paragraph (*b*) does not apply to the security, the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that property is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of the individual or a property that would be a non-qualifying security of the individual if the individual were alive at that time) received by the donee for the disposition and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts or total Crown gifts for a taxation year; and

(15) Subsections (1) and (2) and (4) to (7) and (9) to (14) apply to gifts made after December 20, 2002. In addition, for gifts made after May 8, 2000 but on or before December 20, 2002, paragraph (*a*) of the definition "total ecological gifts" in subsection 118.1(1) of the Act is to be read as follows:

(*a*) Her Majesty in right of Canada or a province, a municipality in Canada or a municipal or public body performing a function of government in Canada, or

(16) Subsection (3) applies to gifts made after May 8, 2000.

(17) Subsection (8) applies to gifts made after 1999 except that, for gifts made after 1999 and on or before December 20, 2002, the expression "subsection 248(30)" in subsection 118.1(6) of the Act, as enacted by subsection (8), shall be read as "subsection (1)".

52. (1) The description of B in subsection 118.2(1) of the Act is replaced by the following:

B is the total of the individual's medical expenses

(*a*) that are evidenced by receipts filed with the Minister,

(*b*) that were not included in determining an amount under this subsection or subsection 122.51(2) for a preceding taxation year, and

(*c*) that were paid by the individual or the individual's legal representative within any period of 12 months that ends in the year or, if those expenses were in respect of a person (including the individual) who died in the year, within any period of 24 months that includes the day of the person's death;

(2) Subparagraph 118.2(2)(*c*)(i) of the Act is replaced by the following:

(i) the patient is, and has been certified in writing by a medical practitioner to be, a person who, by reason of mental or physical infirmity, is and is likely to be for a long-continued period of indefinite duration dependent on others for the patient's personal needs and care and who, as a result, requires a full-time attendant,

(3) Paragraphs 118.2(2)(*d*) and (*e*) of the Act are replaced by the following:

(*d*) for the full-time care in a nursing home of the patient, who has been certified in writing by a medical practitioner to be a person who, by reason of lack of normal mental capacity, is and in the foreseeable future will continue to be dependent on others for the patient's personal needs and care;

(*e*) for the care, or the care and training, at a school, an institution or another place of the patient, who has been certified in writing by an appropriately qualified person to be a person who, by reason of a physical or mental handicap, requires the equipment, facilities or personnel specially provided by that school, institution or other place for the care, or the care and training, of individuals suffering from the handicap suffered by the patient;

(4) Subparagraph 118.2(2)(*g*)(ii) of the Act is replaced by the following:

(ii) one individual who accompanied the patient, where the patient was, and has been certified in writing by a medical practitioner to be, incapable of travelling without the assistance of an attendant

(5) Paragraph 118.2(2)(*h*) of the Act is replaced by the following:

(*h*) for reasonable travel expenses (other than expenses described in paragraph (*g*)) incurred in respect of the patient and, where the patient was, and has been certified in writing by a medical practitioner to be, incapable of travelling without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells if the circumstances described in subparagraphs (*g*)(iii) to (v) apply;

(6) The portion of paragraph 118.2(2)(*l*.1) of the French version of the Act before subparagraph (i) is replaced by the following:

l.1) au nom du particulier, de son époux ou conjoint de fait ou d'une personne à charge visée à l'alinéa *a*), qui doit subir une transplantation de la moelle osseuse ou d'un organe :

(7) Subsection (1) applies to the 2001 and subsequent taxation years.

(8) Subsections (2) to (5) apply to certifications made after December 20, 2002.

53. (1) Paragraph 118.3(2)(*a*) of the French version of the Act is replaced by the following:

a) d'une part, le particulier demande pour l'année, pour cette personne, une déduction prévue au paragraphe 118(1), soit par application de l'alinéa 118(1)*b*), soit, si la personne est le père, la mère, le grand-père, la grand-mère, un enfant, un petit-enfant, le frère, la soeur, la tante, l'oncle, le neveu ou la nièce du particulier ou de son époux ou conjoint de fait, par application des alinéas 118(1)*c*.1) ou *d*), ou aurait pu demander une telle déduction pour l'année si cette personne n'avait eu aucun revenu pour l'année et avait atteint l'âge de 18 ans avant la fin de l'année et, dans le cas de la déduction prévue à l'alinéa 118(1)*b*), si le particulier n'avait pas été marié ou n'avait pas vécu en union de fait;

(2) Subsection (1) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (1) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

54. Subparagraph 118.5(1)(*a*)(iii) of the Act is replaced by the following:

(iii) are paid on behalf of, or reimbursed to, the individual by the individual's employer and the amount paid or reimbursed is not included in the individual's income,

55. (1) Subparagraph (*a*)(i) of the definition "designated educational institution" in subsection 118.6(1) of the Act is replaced by the following:

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Education of the Province of Quebec for the purposes of *An Act respecting financial assistance for education expenses*, R.S.Q, c. A-13.3, or

(2) Subparagraph (*a*)(ii) of the definition "qualifying educational program" in subsection 118.6(1) of the Act is replaced by the following:

(ii) a benefit, if any, received by the student by reason of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3, or by reason of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*, or

(3) Paragraph 118.6(3)(*b*) of the Act is amended by adding the following after subparagraph (i):

(*i*.1) a speech impairment, by a medical doctor or a speech-language pathologist,

(4) Subsections (1) and (2) apply to the 1998 and subsequent taxation years.

(5) Subsection (3) applies to certifications made after October 17, 2000.

56. (1) The description of C in subsection 118.61(1) of the Act is replaced by the following:

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.3 and 118.7);

(2) Paragraph 118.61(2)(*b*) of the Act is replaced by the following:

(*b*) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Division (other than an amount deductible under this section and any of sections 118, 118.3 and 118.7).

(3) Subsections (1) and (2) apply to the 2002 and subsequent taxation years.

57. (1) Paragraph 120.2(3)(*b*) of the Act is replaced by the following:

(*b*) the amount that, if this Act were read without reference to section 120, would be the individual's tax payable under this Part for the year if the individual were not entitled to any deduction under any of sections 126, 127 and 127.4, and

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

58. (1) The portion of paragraph 120.31(3)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) if the eligible taxation year ended before the taxation year preceding the year of receipt, an amount equal to the amount that would be calculated as interest payable on the amount, if any, by which the amount determined under paragraph (*a*) in respect of the eligible taxation year exceeds the taxpayer's tax payable under this Part for that year, if the amount that would be calculated as interest payable on that excess were calculated

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

59. (1) The portion of subparagraph (*b*)(ii) of the definition "split income" in subsection 120.4(1) of the English version of the Act before clause (A) is replaced by the following:

(ii) can reasonably be considered to be income derived from the provision of property or services by a partnership or trust to, or in support of, a business carried on by

(2) The portion of clause (*c*)(ii)(C) of the definition "split income" in subsection 120.4(1) of the English version of the Act before subclause (I) is replaced by the following:

(C) to be income derived from the provision of property or services by a partnership or trust to, or in support of, a business carried on by

(3) Subsections (1) and (2) apply in computing split income of a specified individual for taxation years that begin after December 20, 2002, other than in computing an amount included in that income that is from a trust or partnership for a taxation year or fiscal period of the trust or partnership that began before December 21, 2002.

60. (1) The portion of subsection 122.3(1) of the Act before paragraph (*a*) is replaced by the following:

Overseas employment tax credit

122.3 (1) If an individual is resident in Canada in a taxation year and, throughout any period of more than six consecutive months that began before the end of the year and included any part of the year (in this section referred to as the "qualifying period")

(2) Subsection 122.3(1.1) of the Act is replaced by the following:

Excluded income

(1.1) No amount may be included under paragraph (1)(*d*) in respect of an individual's income for a taxation year from the individual's employment by an employer

(*a*) if

(i) the employer carries on a business of providing services and does not employ in the business throughout the year more than five full-time employees,

(ii) the individual

(A) does not deal at arm's length with the employer, or is a specified shareholder of the employer, or

(B) where the employer is a partnership, does not deal at arm's length with a member of the partnership, or is a specified shareholder of a member of the partnership, and

(iii) but for the existence of the employer, the individual would reasonably be regarded as being an employee of a person or partnership that is not a specified employer; or

(*b*) if at any time in that portion of the qualifying period that is in the taxation year

(i) the employer provides the services of the individual to a corporation, partnership or trust with which the employer does not deal at arm's length, and

(ii) the fair market value of all the issued shares of the capital stock of the corporation or of all interests in the partnership or trust, as the case may be, that are held by persons who are resident in Canada is less than 10% of the fair market value of all those shares or interests.

(3) Subsections (1) and (2) apply to taxation years that begin after this Act is assented to.

61. (1) Subparagraph 125(1)(*b*)(ii) of the Act is replaced by the following:

(ii) 3 times the total of the amounts that would be deductible under subsection 126(2) from the tax for the year otherwise payable under this Part by it if those amounts were determined without reference to section 123.4, and

(2) The description of B in the formula in subsection 125(5.1) of the Act is replaced by the following:

B is

(*a*) if, in both the particular taxation year and the preceding taxation year, the corporation is not associated with any corporation, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for the preceding taxation year,

(*b*) if the corporation is not associated with any corporation in the particular taxation year but was associated with one or more corporations in the preceding taxation year, the amount that would, but for subsections 181.1(2) and (4), be the corporation's tax payable under Part I.3 for the particular taxation year, (*c*) if, in the particular taxation year the corporation is associated with one or more particular corporations and in the preceding taxation year the corporation was associated with all of the particular corporations and no other corporation, the total of all amounts each of which would, but for subsections 181.1(2) and (4), be the tax payable under Part I.3 by the corporation, or by any of the particular corporations, for its last taxation year that ended in the preceding calendar year, and

(*d*) if, in the particular taxation year the corporation is associated with one or more particular corporations and in the preceding taxation year the corporation was not associated with all of the particular corporations or was associated with another corporation, the amount determined by the formula

$$0.225\% \text{ of } (D\text{-}E)$$

where

D is the total of all amounts each of which is the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation or of any of the particular corporations for its last taxation year that ended in the preceding calendar year, and

E is $10 million.

(3) Subsection (1) applies to the 2003 and subsequent taxation years.

(4) Subsection (2) applies to taxation years that begin after December 20, 2002.

62. (1) Subparagraph 125.1(1)(*b*)(ii) of the Act is replaced by the following:

(ii) 3 times the total of the amounts that would be deductible under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation if those amounts were determined without reference to section 123.4, and

(2) The definition « bénéfices de fabrication et de transformation au Canada » in subsection 125.1(3) of the French version of the Act is replaced by the following:

"bénéfices de fabrication et de transformation au Canada"
« Canadian manufacturing and processing profits »

« bénéfices de fabrication et de transformation au Canada » En ce qui concerne une société pour une année d'imposition, la partie du total des montants représentant chacun le revenu que la société a tiré pour l'année d'une entreprise exploitée activement au Canada, déterminé en vertu des règles établies à cette fin par règlement pris sur recommandation du ministre des Finances, qui doit s'appliquer à la fabrication ou à la transformation au Canada de marchandises destinées à la vente ou à la location.

(3) Subparagraphs (*l*)(i) and (ii) of the definition « fabrication ou transformation » in subsection 125.1(3) of the French version of the Act are replaced by the following:

(i) de la vente ou de la location de marchandises qu'elle a fabriquées ou transformées au Canada,

(ii) de la fabrication ou de la transformation au Canada de marchandises destinées à la vente ou à la location, sauf des marchandises qu'elle devait vendre ou louer elle-même.

(4) Subsection (1) applies to the 2003 and subsequent taxation years.

62.1 (1) The definition "taxable resource income" in subsection 125.11(1) of the Act is replaced by the following:

"taxable resource income"
« revenu imposable provenant de ressources »

"taxable resource income", of a taxpayer for a taxation year, is the lesser of

(*a*) the amount, if any, by which the taxpayer's taxable income for the taxation year exceeds 100/16 of the amount deducted under subsection 125(1) from the taxpayer's tax otherwise payable under this Part for the year, and

(*b*) the amount determined by the formula

$$3(A / B) + C - D - E$$

where

A is the total of all amounts each of which is deducted by the taxpayer under paragraph 20(1)(*v*.1) in computing the taxpayer's income for the taxation year;

B is the percentage that is the total of

(i) that proportion of 100% that the number of days in the taxation year that are before 2003 is of the number of days in the taxation year,

(ii) that proportion of 90% that the number of days in the taxation year that are in 2003 is of the number of days in the taxation year,

(iii) that proportion of 75% that the number of days in the taxation year that are in 2004 is of the number of days in the taxation year,

(iv) that proportion of 65% that the number of days in the taxation year that are in 2005 is of the number of days in the taxation year, and

(v) that proportion of 35% that the number of days in the taxation year that are in 2006 is of the number of days in the taxation year;

C is total of all amounts included in computing the taxpayer's income for the taxation year under paragraph 59(3.2)(*b*) or (*c*);

D is the total of all amounts deducted by the taxpayer under any of sections 65 to 66.7, other than subsections 66(4), 66.21(4) and 66.7(2) and (2.3), of this Act, and subsections 17(2) and (6) and section 29 of the *Income Tax Application Rules*, in computing the taxpayer's income for the taxation year; and

E is 100/16 of the amount deducted under subsection 125(1) from the taxpayer's tax otherwise payable under this Part for the year.

(2) Subsection (1) applies to taxation years that begin after ANNOUNCEMENT DATE.

63. (1) The definition "investor" in subsection 125.4(1) of the Act is repealed.

(2) The definitions "assistance" and "salary or wages" in subsection 125.4(1) of the Act are replaced by the following:

"assistance"
« montant d'aide »

"assistance" means an amount, other than a prescribed amount or an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(*x*) in computing a taxpayer's income for any taxation year if that paragraph were read without reference to its

(*a*) subparagraphs (v) to (viii), if the amount were received from a person or partnership described in subparagraph 12(1)(*x*)(ii), and

(*b*) subparagraphs (v) to (vii), in any other case.

"salary or wages"
« traitement ou salaire »

"salary or wages" does not include an amount

(*a*) described in section 7,

(*b*) determined by reference to profits or revenues, or

(*c*) paid to a person in respect of services rendered by the person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

(3) The definition "Canadian film or video production certificate" in subsection 125.4(1) of the Act is replaced by the following:

"Canadian film or video production certificate"
« certificat de production cinématographique ou magnétoscopique »

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(*a*) except where the production is a prescribed treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(i) a qualified corporation that owns or owned an interest in the production,

(ii) a prescribed taxable Canadian corporation related to the qualified corporation, or

(iii) any combination of corporations described in (i) or (ii), and

(*b*) public financial support of the production would not be contrary to public policy.

(4) The portion of the definition "labour expenditure" in subsection 125.4(1) of the Act before subparagraph (*b*)(i) is replaced by the following:

"labour expenditure"
« dépense de main-d'oeuvre »

"labour expenditure", of a corporation for a taxation year in respect of a Canadian film or video production, means, in the case of a corporation that is not a qualified corporation for the taxation year, nil, and in the case of a corporation that is a qualified corporation for the taxation year, subject to subsection (2), the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost to, or in the case of depreciable property the capital cost to, the corporation, or any other person or partnership, of the production:

(*a*) the salary or wages directly attributable to the production that are incurred after 1994 and in the taxation year, or the preceding taxation year, by the corporation for the stages of production of the property, from the production commencement time to the end of the post-production stage, and paid by it in the taxation year or within 60 days after the end of the taxation year (other than amounts incurred in that preceding taxation year that were paid within 60 days after the end of that preceding taxation year),

(*b*) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding taxation year) that is directly attributable to the production of property, that relates to services rendered after 1994 and in the taxation year, or that preceding taxation year, to the corporation for the stages of production, from the production commencement time to the end of the post-production stage, and that is paid by it in the taxation year or within 60 days after the end of the taxation year to

(5) The portion of the definition "qualified labour expenditure" in subsection 125.4(1) of the Act before paragraph (*a*) is replaced by the following:

"qualified labour expenditure"
« dépense d main-d'oeuvre admissible »

"qualified labour expenditure", of a corporation for a taxation year in respect of a Canadian film or video production, means the lesser of

(6) The portion of the description of A in paragraph (*b*) of the definition "qualified labour expenditure" in subsection 125.4(1) of the Act before subparagraph (ii) is replaced by the following:

A is 60% of the amount by which

(i) the total of all amounts each of which is an expenditure by the corporation in respect of the production that is included in the cost to, or in the case of depreciable property the capital cost to, the corporation or any other person or partnership of the production at the end of the taxation year,

exceeds

(7) Subsection 125.4(1) of the Act is amended by adding the following in alphabetical order:

"production commencement time"
« début de la production »

"production commencement time", in respect of a Canadian film or video production, means the earlier of

(*a*) the time at which principal photography of the production begins, and

(*b*) the latest of

(i) the time at which a qualified corporation that has an interest in the production, or the parent of the corporation, first makes an expenditure for salary or wages or other remuneration for activities, of scriptwriters, that are directly attributable to the development by the corporation of script material of the production,

(ii) the time at which the corporation or the parent of the corporation acquires a property, on which the production is based, that is a published literary work, screenplay, play, personal history or all or part of the script material of the production, and

(iii) two years before the date on which principal photography of the production begins.

"script material"
« texte »

"script material", in respect of a production, means written material describing the story on which the production is based and, for greater certainty, includes a draft script, original story, screen story, narration, television production concept, outline or scene-by-scene schematic, synopsis or treatment.

(8) The portion of subsection 125.4(2) of the Act before paragraph (*b*) is replaced by the following:

Rules governing labour expenditures of a corporation

(2) For the purposes of the definitions "labour expenditure" and "qualified labour expenditure" in subsection (1),

(*a*) remuneration does not include remuneration

(i) determined by reference to profits or revenues, or

(ii) in respect of services rendered by a person at a time when the person was non-resident, unless the person was at that time a Canadian citizen;

(9) Subsection 125.4(2) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) an expenditure incurred in respect of a film or video production by a qualified corporation (in this paragraph referred to as the "co-producer") in respect of goods supplied or services rendered by another qualified corporation to the co-producer in respect of the production is not a labour expenditure to the co-producer or, for the purpose of applying of this section to the co-producer, a cost or capital cost of the production.

(10) Subsection 125.4(4) of the Act is replaced by the following:

Exception

(4) This section does not apply to a Canadian film or video production if the production, or an interest in a person or partnership that has, directly or indirectly, an interest in the production, is a tax shelter investment for the purpose of section 143.2.

(11) Subsection 125.4(6) of the Act is replaced by the following:

Revocation of a certificate

(6) If an omission or incorrect statement was made for the purpose of obtaining a Canadian film or video production certificate in respect of a production, or if the production is not a Canadian film or video production

(*a*) the Minister of Canadian Heritage may

(i) revoke the certificate, or

(ii) if the certificate was issued in respect of productions included in an episodic television series, revoke the certificate in respect of one or more episodes in the series;

(*b*) for greater certainty, for the purposes of this section, the expenditures and cost of production in respect of productions included in an episodic television series that relate to an episode in the series in respect of which a certificate has been revoked are not attributable to a Canadian film or video production; and

(*c*) for the purpose of subparagraph (3)(*a*)(i), a certificate that has been revoked is deemed never to have been issued.

(12) Section 125.4 of the Act is amended by adding the following after subsection (6):

Guidelines

(7) The Minister of Canadian Heritage shall issue guidelines respecting the circumstances under which the conditions in paragraphs (*a*) and (*b*) of the definition of "Canadian film or video production certificate" in subsection (1) are satisfied. For greater certainty, these guidelines are not statutory instruments as defined in the *Statutory Instruments Act*.

(13) Subsections (1) and (10) apply

(*a*) to taxation years that end after November 14, 2003; and

(*b*) in respect of a film or video production in respect of which a corporation has, in a return of income filed before November 14, 2003, claimed an amount under subsection 125.4(3) of the Act in respect of a labour expenditure incurred after 1997.

(14) Subsections (2) and (4) to (9) apply

(*a*) to film or video productions for which the production commencement time of the corporation (or, if there is more than one qualified corporation in respect of the production, of all such corporations) is on or after November 14, 2003, and

(*b*) to a corporation in respect of a film or video production for which the production commencement time of any corporation is before November 14, 2003

(i) if the earliest labour expenditure of the corporation (or, if there is more than one qualified corporation in respect of the production, of all such corporations) in respect of the production is made after 2003, or

(ii) if the corporation elects (or, if there is more than one qualified corporation in respect of the production, all such corporations jointly elect), in writing, and the election is filed with the Minister of National Revenue on or before the earliest filing-due date of any qualified corporation in respect of the production for that corporation's taxation year that includes the day on which this Act is assented to, and the earliest labour expenditure of all such qualified corporations in respect of the production is made

(A) after the last taxation year of any such corporation that ended before November 14, 2003, or

(B) if the first taxation year of all such corporations includes November 14, 2003, in that taxation year.

(15) The earliest labour expenditure referred to in subsection (14) is to be determined under the provisions of subsection 125.4(1) or (2) of the *Income Tax Act* that would apply if the following provisions were not enacted:

(*a*) the definitions "assistance" and "salary or wages" of its subsection 125.4(1), as enacted by subsection (2);

(*b*) the portion of the definition "labour expenditure" in its subsection 125.4(1), as enacted by subsection (4);

(*c*) the portions of the definition "qualifed labour expenditure" in its subsection 125.4(1), as enacted respectively by subsections (5) and (6);

(*d*) the definitions "production commencement time" and "script material" in subsection 125.4(1) of the Act, as enacted by subsection (7);

(*e*) the portion of its subsection 125.4(2), as enacted by subsection (8); and

(*f*) its paragraph 125.4(2)(*d*), as enacted by subsection (9).

(16) Subsection (3) applies in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that in respect

of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the definition "Canadian film or video production certificate" in subsection 125.4(1) of the Act, as enacted by subsection (3), is to be read as follows:

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage

(*a*) certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(i) except where the production is a prescribed treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(A) a qualified corporation that owns or owned an interest in the production,

(B) a prescribed taxable Canadian corporation related to the qualified corporation, or

(C) any combination of corporations described in (A) or (B), and

(ii) public financial support of the production would not be contrary to public policy, and

(*b*) estimating amounts relevant for the purpose of determining the amount deemed under subsection (3) to have been paid in respect of the production.

(17) Subsection (11) applies after November 14, 2003.

(18) Subsection (12) applies in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that in respect of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the expression "paragraphs (*a*) and (*b*)" in subsection 125.4(7), as enacted by subsection (12), is to be read as the expression "subparagraphs (*a*)(i) and (ii)".

64. (1) The portion of subsection 126(2.22) of the French version of the Act before paragraph (*a*) is replaced by the following:

Ancien résident — bénéficiaire de fiducie

(2.22) Lorsqu'un particulier non-résident dispose, au cours d'une année d'imposition donnée, d'un bien qu'il a acquis la dernière fois à un moment (appelé « moment de l'acquisition » au présent paragraphe) à l'occasion d'une distribution effectuée après le 1er octobre 1996 et à laquelle les alinéas 107(2)*a*) à *c*) ne s'appliquent pas par le seul effet du paragraphe 107(5), la fiducie peut déduire de son impôt payable par ailleurs en vertu de la présente partie pour l'année (appelée « année de la distribution » au présent paragraphe) qui comprend le moment de l'acquisition un montant ne dépassant pas le moins élevé des montants suivants :

(2) The portion of paragraph 126(2.22)(*a*) of the French version of the Act after subparagraph (ii) and before subparagraph (iii) is replaced by the following:

s'il est raisonnable de considérer que le montant a été payé sur la partie de tout gain ou bénéfice tiré de la disposition du bien qui s'est accumulée avant la distribution et après le dernier en date des moments suivants, antérieur à la distribution :

(3) Subparagraphs 126(2.22)(*b*)(i) and (ii) of the French version of the Act are replaced by the following:

(i) le montant d'impôt en vertu de la présente partie qui était payable par ailleurs par la fiducie pour l'année de la distribution, compte tenu de l'application du présent paragraphe aux dispositions effectuées avant le moment de la disposition,

(ii) le montant de cet impôt qui aurait été payable par la fiducie pour l'année de la distribution si le bien n'avait pas été distribué au particulier.

(4) Paragraph 126(4.4)(*a*) of the Act is replaced by the following:

(*a*) a disposition or acquisition of property deemed to be made by subsection 10(12) or (13), 14(14) or (15) or 45(1), section 70, 128.1 or 132.2, subsections 138(11.3) or 142.5(2), paragraph 142.6(1)(*b*), or subsections 142.6(1.1) or (1.2) or 149(10) is not a disposition or acquisition, as the case may be; and

(5) Subsection 126(6) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*), and by adding the following:

(*d*) if, in computing a taxpayer's income for a taxation year from a business carried on by the taxpayer in Canada, an amount is included in respect of interest paid or payable to the taxpayer by a person resident in a country other than Canada, and the taxpayer has paid to the government of that other country a non-business income tax for the year with respect to the amount, the amount is, in applying the definition "qualifying incomes" for the purpose of subsection (1), deemed to be income from a source in that other country.

(6) Subsection (4) applies to dispositions and acquisitions that occur after 1998, except that in applying paragraph 126(4.4)(*a*) of the Act, as enacted by subsection (4), to dispositions and acquisitions that occur before June 28, 1999, that paragraph is to be read without reference to the expression "10(12) or (13), 14(14) or (15), or".

(7) Subsection (5) applies to amounts received after ANNOUNCEMENT DATE.

65. (1) Section 126.1 of the Act is repealed.

(2) Subsection (1) applies in respect of forms filed after March 20, 2003.

66. (1) Paragraphs 127(1)(*a*) and (*b*) of the French version of the Act are replaced by the following:

a) les 2/3 de tout impôt sur les opérations forestières, payé par le contribuable au gouvernement d'une province sur le revenu pour l'année tiré d'opérations forestières dans cette province;

b) le quinzième du revenu du contribuable pour l'année, tiré d'opérations forestières dans la province, dont fait mention l'alinéa *a*).

(2) The definition "revenu pour l'année tiré des opérations forestières dans la province" in subsection 127(2) of the French version of the Act is repealed.

(3) The definition "impôt sur les opérations forestières" in subsection 127(2) of the French version of the Act is replaced by the following:

« impôt sur les opérations forestières »
"logging tax"

« impôt sur les opérations forestières » Impôt levé par la législature d'une province et qui est, par règlement, déclaré être un impôt d'application générale sur le revenu tiré d'opérations forestières.

(4) Subsection 127(2) of the French version of the Act is amended by adding the following in alphabetical order:

« revenu pour l'année tiré d'opérations forestières dans la province »
"income for the year from logging operations in the province"

« revenu pour l'année tiré d'opérations forestières dans la province » S'entend au sens du règlement.

(5) The portion of subsection 127(3) of the Act before paragraph (*a*) is replaced by the following:

Contributions to registered parties and candidates

(3) There may be deducted from the tax otherwise payable by a taxpayer under this Part for a taxation year in respect of the total of all amounts each of which is the eligible amount, of a monetary contribution referred to in the *Canada Elections Act*, made by the taxpayer in the year to a registered party, a provincial division of a registered party, a registered association or a candidate, as those terms are defined in that Act,

(6) Subsection 127(4.2) of the Act is replaced by the following:

Allocation of amount contributed among partners

(4.2) If at the end of a fiscal period of a partnership a taxpayer is a member of the partnership, the taxpayer's share of the total that would, if the partnership were a person and its fiscal period were its taxation year, be the total referred to in subsection (3) in respect of the partnership for that taxation year is deemed for the purpose of that subsection to be a monetary contribution made by the taxpayer in the taxpayer's taxation year in which the fiscal period of the partnership ends.

(7) Paragraphs 127(27)(*b*) and (*c*) of the Act are replaced by the following:

(*b*) the cost, or a portion of the cost, of the particular property was a qualified expenditure, or would if this Act were read without reference to subsection (26) be a qualified expenditure, to the taxpayer,

(*c*) the cost, or the portion of the cost, of the particular property is included, or would if this Act were read without reference to subsection (26) be included, in an amount, a percentage of which can reasonably be considered to be included in computing the taxpayer's investment tax credit at the end of the taxation year, and

(8) The portion of subsection 127(27) of the Act after paragraph (*d*) is replaced by the following:

there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of

(*e*) the amount that can reasonably be considered to be included in the taxpayer's investment tax credit at the end of any taxation year, or that would be so included if this Act were read without reference to subsection (26), in respect of the particular property, and

(*f*) the amount that is the percentage that is the sum of any percentage described in paragraph (*c*) of

(i) in the case where the particular property or the other property is disposed of to a person who deals at arm's length with the taxpayer,

(A) the proceeds of disposition of the property, if the property

(I) is the particular property and is neither first term shared-use equipment nor second term shared-use equipment, or

(II) is the other property,

(B) 25% of the proceeds of disposition of the property, if the property is the particular property, is first term shared-use equipment and is not second term shared-use equipment, and

(C) 50% of the proceeds of disposition of the property, if the property is the particular property and is second term shared-use equipment, and

(ii) in the case where the particular property or the other property is converted to commercial use or is disposed of to a person who does not deal at arm's length with the taxpayer,

(A) the fair market value of the property, if the property

(I) is the particular property and is neither first term shared-use equipment nor second term shared-use equipment, or

(II) is the other property,

(B) 25% of the fair market value of the property at the time of its conversion or disposition, if the particular property is first term shared-use equipment and is not second term shared-use equipment, and

(C) 50% of the fair market of the property at the time of its conversion or disposition, if the particular property is second term shared-use equipment.

(9) Subsections (5) and (6) apply to monetary contributions made after December 20, 2002, except that for monetary contributions made before 2004, the expression "to a registered party, a provincial division of a registered party, a registered association or a candidate" in subsection 127(3) of the Act, as enacted by subsection (5), is to be read as the expression "to a registered party or a candidate".

(10) Subsections (7) and (8) apply to dispositions and conversions that occur after December 20, 2002.

67. (1) Paragraph (*b*) of the definition "approved share" in subsection 127.4(1) of the Act is replaced by the following:

(*b*) a share issued by a prescribed labour-sponsored venture capital corporation that is not a registered labour-sponsored venture capital corporation if, at the time of the issue, no province under the laws (described in section 6701 of the regulations) of which the corporation is registered or established provides assistance in respect of the acquisition of the share;

(2) Paragraphs (*a*) and (*b*) of the definition "qualifying trust" in subsection 127.4(1) of the English version of the Act are replaced by the following:

(*a*) a trust governed by a registered retirement savings plan, under which the individual is the annuitant, that is not a spousal or common-law partner plan (in this definition having the meaning assigned by subsection 146(1)) in relation to another individual, or

(*b*) a trust governed by a registered retirement savings plan, under which the individual or the individual's spouse or common-law partner is the annuitant, that is a spousal or common-law partner plan in relation to the individual or the individual's spouse or common-law partner, if the individual and no other person claims a deduction under subsection 127.4(2) in respect of the share;

(3) Subsection (1) applies to the 2003 and subsequent taxation years.

(4) Subsection (2) applies to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsection (2) applies to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

68. (1) Paragraph 127.52(1)(*d*) of the Act is amended by striking out the word "and" and the end of subparagraph (i), by adding the word "and" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) this Act were read without reference to subsection 104(21.6);

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

69. (1) Section 127.531 of the Act is replaced by the following:

Basic minimum tax credit determined

127.531 An individual's basic minimum tax credit for a taxation year is the total of all amounts each of which is

(*a*) an amount deducted under subsection 118(1) or (2) or 118.3(1) or any of sections 118.5 to 118.7 in computing the individual's tax payable for the year under this Part, or

(*b*) the amount that was claimed under section 118.1 or 118.2 in computing the individual's tax payable for the year under this Part, determined without reference to this Division, to the extent that the amount claimed does not exceed the maximum amount deductible under that section in computing the individual's tax payable for the year under this Part, determined without reference to this Division.

(2) Subsection (1) applies to the 2002 and subsequent taxation years.

69.1 (1) Paragraph 128.1(7)(*b*) of the French version of the Act is replaced by the following:

b) est propriétaire, à ce moment, d'un bien qu'il a acquis, la dernière fois, à l'occasion d'une distribution à laquelle le paragraphe 107(2) se serait appliqué, n'eût été le paragraphe 107(5), effectuée par une fiducie à un moment (appelé « moment de la distribution » au présent paragraphe) postérieur au 1er octobre 1996 et antérieur au moment donné;

(2) Paragraph 128.1(7)(*d*) of the French version of the Act is replaced by the following:

d) sous réserve des alinéas *e*) et *f*), si le particulier et la fiducie en font conjointement le choix dans un document présenté au ministre au plus tard à la première en date des dates d'échéance de production qui leur est applicable pour leur année d'imposition qui comprend le moment donné, le paragraphe 107(2.1) ne s'applique pas à la distribution pour ce qui est des biens que le particulier a acquis à l'occasion de la distribution et qui étaient des biens canadiens imposables lui appartenant tout au long de la période ayant commencé au moment de la distribution et se terminant au moment donné;

(3) Subparagraph 128.1(7)(*e*)(i) of the French version of the Act is replaced by the following:

(i) il résidait au Canada au moment de la distribution,

(4) Subparagraphs 128.1(7)(*f*)(i) and (ii) of the French version of the Act are replaced by the following:

(i) malgré l'alinéa 107(2.1)*a*), la fiducie est réputée avoir disposé du bien au moment de la distribution pour un produit de disposition égal au total des montants suivants :

(A) le coût indiqué du bien pour elle immédiatement avant ce moment,

(B) l'excédent éventuel du montant de la réduction prévue au paragraphe 40(3.7) et dont il est question à l'alinéa *e*), sur le moins élevé des montants suivants :

(I) le coût indiqué du bien pour la fiducie immédiatement avant le moment de la distribution,

(II) le montant que le particulier et la fiducie ont indiqué conjointement pour l'application du présent alinéa dans le document concernant le choix prévu à l'alinéa *d*) relativement au bien,

(ii) malgré l'alinéa 107(2.1)*b*), le particulier est réputé avoir acquis le bien au moment de la distribution à un coût égal à l'excédent éventuel du montant déterminé par ailleurs selon l'alinéa 107(2)*b*) sur le montant de la réduction prévue au paragraphe 40(3.7) et dont il est question à l'alinéa *e*), ou, s'il est moins élevé, le montant indiqué selon la subdivision (i)(B)(II);

(5) The portion of paragraph 128.1(7)(*g*) of the French version of the Act before subparagraph (i) is replaced by the following:

g) si le particulier et la fiducie en font conjointement le choix, dans un document présenté au ministre au plus tard à la dernière en date des dates d'échéance de production qui leur est applicable pour leur année d'imposition qui comprend le moment donné, relativement à chaque bien dont le particulier a été propriétaire tout au long de la période ayant commencé au moment de la distribution et se terminant au moment donné et dont il est réputé, par l'alinéa (1)*b*), avoir disposé du fait qu'il est devenu un résident du Canada, le produit de disposition pour la fiducie, selon l'alinéa 107(2.1)*a*), au moment de la distribution et le coût d'acquisition du bien pour le particulier au moment donné sont réputés, malgré les alinéas 107(2.1)*a*) et *b*), correspondre à ce produit et à ce coût, déterminés compte non tenu du présent alinéa, diminués du moins élevé des montants suivants :

(6) The portion of paragraph 128.1(7)(*i*) of the French version of the Act before subparagraph (i) is replaced by the following:

i) malgré les paragraphes 152(4) à (5), le ministre établit, pour tenir compte des choix prévus au présent paragraphe, toute cotisation concernant l'impôt payable par la fiducie ou le particulier en vertu de la présente loi pour toute année qui est antérieure à l'année comprenant le moment donné sans être antérieure à l'année comprenant le moment de la distribution; pareille cotisation est toutefois sans effet sur le calcul des montants suivants :

70. (1) Clause 129(3)(*a*)(ii)(C) of the Act is replaced by the following:

(C) 3 times the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, and

(2) Subsection (1) applies to the 2003 and subsequent taxation years.

70.1 (1) Paragraph 132(6)(*c*) of the Act is replaced by the following:

(*c*) it complied with prescribed conditions.

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

71. (1) Paragraph 132.11(1)(*b*) of the Act is replaced by the following:

(*b*) if the trust's taxation year ends on December 15 because of paragraph (*a*), subject to subsection (1.1), each subsequent taxation year of the trust is deemed to be the period that begins at the beginning of December 16 of a calendar year and ends at the end of December 15 of the following calendar year or at such earlier time as is determined under paragraph 132.2(3)(*b*) or subsection 142.6(1); and

(2) Paragraph 132.11(1)(*c*) of the French version of the Act is replaced by the following:

c) chacun de ses exercices qui soit commence dans une de ses années d'imposition se terminant le 15 décembre par l'effet de l'alinéa *a*) soit se termine dans une de ses années d'imposition ultérieures doit prendre fin au plus tard à la fin de l'année où il a commencé.

(3) Subsection (1) applies after 1998, except that in applying paragraph 132.11(1)(*b*) of the Act, as enacted by subsection (1), to taxation years that end before 2000, that paragraph is to be read without reference to the expression "subject to subsection (1.1)".

(4) Subsection (2) applies to the 1998 and subsequent taxation years.

72. (1) Section 132.2 of the Act is replaced by the following:

Definitions re qualifying exchange of mutual funds

132.2 (1) The following definitions apply in this section.

"first post-exchange year"
« première année suivant l'échange »

"first post-exchange year", of a fund in respect of a qualifying exchange, means the taxation year of the fund that begins immediately after the acquisition time.

"qualifying exchange"
« échange admissible »

"qualifying exchange" means a transfer at any time (in this section referred to as the "transfer time") of all or substantially all of the property of a mutual fund corporation or mutual fund trust to a mutual fund trust (in this section referred to as the "transferor" and "transferee", respectively, and as the "funds") if

(*a*) all or substantially all of the shares issued by the transferor and outstanding immediately before the transfer time are within 60 days after the transfer time disposed of to the transferor;

(*b*) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of the transferee; and

(*c*) the funds jointly elect, by filing a prescribed form with the Minister on or before the election's due date.

"share"
« action »

"share" means a share of the capital stock of a mutual fund corporation and a unit of a mutual fund trust.

Timing

(2) In respect of a qualifying exchange, a time mentioned in the following list immediately follows the time that precedes it in the list

(*a*) the transfer time;

(*b*) the first intervening time;

(*c*) the acquisition time;

(*d*) the beginning of the funds' first post-exchange years;

(*e*) the depreciables disposition time;

(*f*) the second intervening time; and

(*g*) the depreciables acquisition time.

General

(3) In respect of a qualifying exchange,

(*a*) each property of a fund, other than property disposed of by the transferor to the transferee at the transfer time and depreciable property, is deemed to have been disposed of, and to have been reacquired by the fund, at the first intervening time, for an amount equal to the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greater of

(A) its cost amount, and

(B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;

(*b*) subject to paragraph (*l*), the last taxation years of the funds that began before the transfer time are deemed to have ended at the acquisition time, and their first post-exchange years are deemed to have begun immediately after those last taxation years ended;

(*c*) each depreciable property of a fund (other than property to which subsection (5) applies and property to which paragraph (*d*) would, if this Act were read without reference to this paragraph, apply) is deemed to have been disposed of, and to have been reacquired, by the fund at the second intervening time for an amount equal to the lesser of

(i) the fair market value of the property at the depreciables disposition time, and

(ii) the greater of

(A) the lesser of its capital cost and its cost amount to the disposing fund at the depreciables disposition time, and

(B) the amount that the fund designates in respect of the property in a notification to the Minister accompanying the election in respect of the qualifying exchange;

(*d*) if at the second intervening time the undepreciated capital cost to a fund of depreciable property of a prescribed class exceeds the fair market value of all the property of that class, the excess is to be deducted in computing the fund's income for the taxation year that includes the transfer time and is deemed to have been allowed in respect of property of that class under regulations made for the purpose of paragraph 20(1)(*a*);

(*e*) except as provided in paragraph (*m*), the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property is deemed to be

(i) nil, if the particular property is a unit of the transferee, and

(ii) the particular property's fair market value at the transfer time, in any other case;

(*f*) the transferor's proceeds of disposition of any units of the transferee that were received by the transferor as consideration for the disposition of the property, and that were disposed of by the transferor within 60 days after the day that includes the transfer time in exchange for shares of the transferor, are deemed to be nil;

(*g*) if, within 60 days after the day that includes the transfer time, a taxpayer disposes of shares of the transferor to the transferor in exchange for units of the transferee

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time,

(ii) where all of the taxpayer's shares of the transferor have been so disposed of, for the purpose of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor, and

(iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor;

(*h*) where a share to which paragraph (*g*) applies would, if this Act were read without reference to this paragraph, cease to be a qualified investment (within the meaning assigned by subsection 146(1), 146.1(1) or 146.3(1) or section 204) as a consequence of the qualifying exchange, the share is deemed to be a qualified investment until the earlier of the day that is 60 days after the day that includes the transfer time and the time at which it is disposed of in accordance with paragraph (*g*);

(*i*) there shall be added to the amount determined under the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the transferee for its taxation years that begin after the transfer time the amount, if any, by which

(i) the transferor's refundable capital gains tax on hand (within the meaning assigned by subsection 131(6) or 132(4), as the case may be) at the end of its taxation year that includes the transfer time

exceeds

(ii) the transferor's capital gains refund (within the meaning assigned by paragraph 131(2)(*a*) or 132(1)(*a*), as the case may be) for that year;

(*j*) no amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss of a fund for a taxation year that began before the transfer time is deductible in computing the taxable income of either of the funds for a taxation year that begins after the transfer time;

(*k*) where the transferor is a mutual fund trust, for the purposes of subsections 132.1(1) and 132.1(3) to (5), the transferee is deemed after the transfer time to be the same mutual fund trust as, and a continuation of, the transferor;

(*l*) where the transferor is a mutual fund corporation, (and, for greater certainty, without having any affect on the computation of any amount determined under this Part) for the purpose of

(i) subsection 131(4), the transferor is deemed in respect of any share disposed of in accordance with paragraph (*g*) to be a mutual fund corporation at the time of the disposition, and

(ii) Part I.3, the transferor's taxation year that, if this Act were read without reference to this paragraph, would have included the transfer time is deemed to have ended immediately before the transfer time;

(*m*) for the purpose of determining the funds' capital gains redemptions (as defined in subsection 131(6) or 132(4), as the case may be), for their taxation years that include the transfer time,

(i) the total of the cost amounts to the transferor of all its properties at the end of the year is deemed to be the total of all amounts each of which is

(A) the transferor's proceeds of disposition of a property that was transferred to a transferee on the qualifying exchange, or

(B) the cost amount to the transferor at the end of the year of a property that was not transferred on the qualifying exchange, and

(ii) the transferee is deemed not to have acquired any property that was transferred to it on the qualifying exchange; and

(*n*) except as provided in subparagraph (*l*)(i), the transferor is, notwithstanding subsections 131(8) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time.

Qualifying exchange – non-depreciable property

(4) If a transferor transfers a property, other than a depreciable property, to a transferee in a qualifying exchange

(*a*) the transferee is deemed to have acquired the property at the acquisition time, and not to have acquired the property at the transfer time;

(*b*) the transferor's proceeds of disposition of the property and the transferee's cost of the property are deemed to be the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greatest of

(A) the cost amount to the transferor of the property at the transfer time,

(B) the amount that the funds agree on in respect of the property in their election, and

(C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property.

Depreciable property

(5) If a transferor transfers a depreciable property to a transferee in a qualifying exchange,

(*a*) the transferor is deemed to have disposed of the property at the depreciables disposition time, and not to have disposed of the property at the transfer time;

(*b*) the transferee is deemed to have acquired the property at the depreciables acquisition time, and not to have acquired the property at the transfer time;

(*c*) the transferor's proceeds of disposition of the property and the transferee's cost of the property are deemed to be the lesser of

(i) the fair market value of the property at the transfer time, and

(ii) the greatest of

(A) the lesser of its capital cost and its cost amount to the transferor immediately before the depreciables disposition time,

(B) the amount that the funds agree on in respect of the property in their election, and

(C) the fair market value at the transfer time of the consideration (other than units of the transferee) received by the transferor for the disposition of the property;

(*d*) where the capital cost of the property to the transferor exceeds the transferor's proceeds of disposition of the property under paragraph (*c*), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(*a*),

(i) the property's capital cost to the transferee is deemed to be the amount that was its capital cost to the transferor, and

(ii) the excess is deemed to have been allowed to the transferee in respect of the property under regulations made for the purpose of paragraph 20(1)(*a*) in computing income for taxation years ending before the transfer time; and

(*e*) where two or more depreciable properties of a prescribed class are disposed of by the transferor to the transferee in the same qualifying exchange, paragraph (*c*) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor at the time of making the election in respect of the qualifying exchange or, if the transferor does not so designate any such order, in the order designated by the Minister.

Due date

(6) The due date of an election referred to in paragraph (*c*) of the definition "qualifying exchange" in subsection (1) is

(*a*) the day that is 6 months after the day that includes the transfer time; and

(*b*) on joint application by the funds, any later day that the Minister accepts.

Amendment or Revocation of Election

(7) The Minister may, on joint application by the funds on or before the due date of an election referred to in paragraph (*c*) of the definition "qualifying exchange" in subsection (1), grant permission to amend or revoke the election.

(2) The definitions "first post-exchange year" and "share" in subsection 132.2(1), and subsections 132.2(2) to (5), of the Act, as enacted by subsection (1), apply to qualifying exchanges that occur after 1998.

(3) If subsection (2) applies to a qualifying exchange, the definition "share" in subsection 132.2(2) of the Act is deemed to have been repealed in respect of the qualifying exchange.

(4) For qualifying exchanges that occurred after June 1994 and before 1999, paragraph 132.2(1)(*j*) of the Act is to be read as follows:

(*j*) where shares of the transferor have been disposed of by a taxpayer to the transferor in exchange for units of the transferee within 60 days after the transfer time,

(i) the taxpayer's proceeds of disposition of the shares and the cost to the taxpayer of the units are deemed to be equal to the cost amount to the taxpayer of the shares immediately before the transfer time,

(ii) if all of the taxpayer's shares of the transferor have been so disposed of, for the purposes of applying section 39.1 in respect of the taxpayer after that disposition, the transferee is deemed to be the same entity as the transferor, and

(iii) for the purpose of the definition "designated beneficiary" in section 210, the units are deemed not to have been held at any time by the transferor;

(5) The definition "qualifying exchange" in subsection 132.2(1), and subsections 132.2(6) and (7), of the Act, as enacted by subsection (1), apply to qualifying exchanges that occur after June 1994.

(6) If subsection (5) applies to a qualifying exchange, the definition "qualifying exchange" in subsection 132.2(2) of the Act is deemed to be been repealed in respect of the qualifying exchange.

(7) If a valid election referred to in paragraph (*c*) of the definition "qualifying exchange" in subsection 132.2(2) of the Act was made, the election continues to have the effect of having section 132.2 of the Act, as modified from time to time, apply to the transfer.

(8) If a valid election referred to in subsection 159(4) of the *Income Tax Amendments Act, 1997* was made in respect of a qualifying exchange to read subsection 132.2(1) of the *Income Tax*

***Act* without reference to paragraph 132.2(1)(*p*) of that Act, the election is, on the application of subsection (1), deemed to have the effect of reading subsection 132.2(3) of the Act, as enacted by subsection (1), in respect of the qualifying exchange without reference to paragraph 132.2(3)(*i*).**

73. (1) Subsection 134.1(2) of the Act is replaced by the following:

Application

(2) For the purposes of applying subsections 104(10) and (11) and 133(6) to (9) (other than the definition "non-resident-owned investment corporation" in subsection 133(8)), section 212 and any tax treaty, a corporation described in subsection (1) is deemed to be a non-resident-owned investment corporation in its first non-NRO year in respect of dividends paid in that year on shares of its capital stock to a non-resident person, to a trust for the benefit of non-resident persons or their unborn issue or to a non-resident-owned investment corporation.

(2) Subsection (1) applies to a corporation that ceases to be a non-resident-owned investment corporation because of a transaction or event that occurs, or a circumstance that arises, in a taxation year of the corporation that ends after February 27, 2000.

74. (1) Subsection 136(1) of the Act is replaced by the following:

Cooperative not private corporation

136. (1) Notwithstanding any other provision of this Act, a cooperative corporation that would, but for this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 123.4, 125, 125.1, 127, 127.1, 152 and 157, the definition "mark-to-market property" in subsection 142.2(1) and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(*c*).

(2) Subsection 136(2) of the Act is amended by striking out the word "and" after paragraph (*b*) and by replacing paragraph (*c*) with the following:

(*c*) at least 90% of its members are individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming; and (*d*) at least 90% of its shares, if any, are held by members described in paragraph (*c*) or by trusts governed by registered retirement savings plans, registered retirement income funds or registered education savings plans the annuitants or subscribers under which are members described in that paragraph.

(3) Subsection (1) applies to the 2001 and subsequent taxation years.

(4) Subsection (2) applies to the 1998 and subsequent taxation years.

75. (1) The definition "member" in subsection 137(6) of the Act is replaced by the following:

"member"
« membre »

"member", of a credit union, means

(*a*) a person who is recorded as a member on the records of the credit union and is entitled to participate in and use the services of the credit union, and

(*b*) a registered retirement savings plan, a registered retirement income fund or a registered education savings plan, the annuitant or subscriber under which is a person described in paragraph (*a*).

(2) Subsection 137(7) of the Act is replaced by the following:

Credit union not private corporation

(7) Notwithstanding any other provision of this Act, a credit union that would, if this Act were read without reference to this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 123.1, 123.4, 125, 127, 127.1, 152 and 157 and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(*c*).

(3) Subsection (1) applies to the 1996 and subsequent taxation years.

(4) Subsection (2) applies to the 2001 and subsequent taxation years.

76. (1) Subsection 137.1(2) of the Act is replaced by the following:

Amounts not included in income

(2) The following amounts are not to be included in computing the income of a deposit insurance corporation for a taxation year:

(*a*) any premium or assessment received, or receivable, by it in the year from a member institution; and

(*b*) any amount received by it in the year from another deposit insurance corporation to the extent that that amount can reasonably be considered to have been paid out of amounts referred to in paragraph (*a*) received by that the other deposit insurance corporation in any taxation year.

(2) Subsection 137.1(4) of the Act is amended by striking out the word "or" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) any amount paid by it to another deposit insurance corporation that is, because of paragraph (2)(*b*), not included in computing the income of that other deposit insurance corporation; or

(3) Subsections (1) and (2) apply to the 1998 and subsequent taxation years.

77. (1) Subsection 138(2) of the Act is replaced by the following:

Insurer's income or loss

(2) For greater certainty,

(*a*) where a life insurer resident in Canada carries on an insurance business in Canada and in a country other than Canada in a taxation year, its income or loss for the year from carrying on an insurance business is the amount that would be its income or loss for the year from the business carried on in Canada if no amount were included

(i) in respect of its gross investment revenue for the year from its property (other than property that was designated insurance property for the year) used or held by it in the course of carrying on an insurance business,

(ii) in respect of taxable capital gains and allowable capital losses from dispositions of its property (other than designated insurance property for the taxation year in which it disposed of the property) used or held by it in the course of carrying on an insurance business; and

(*b*) where a non-resident insurer carries on an insurance business in Canada in a taxation year, its income or loss for the year from carrying on its insurance business in Canada is the amount that would be its income or loss for the year from that business carried on in Canada if no amount were included

(i) in respect of its gross investment revenue for the year from its property (other than property that was designated insurance property for the year) used or held by it in the course of carrying on an insurance business, and

(ii) in respect of taxable capital gains and allowable capital losses from dispositions of its property (other than designated insurance property for the taxation year in which it disposed of the property) used or held by it in the course of carrying on an insurance business.

(2) Paragraph 138(11.91)(*d*) of the French version of the Act is repealed.

(3) Subsection 138(11.91) of the English version of the Act is amended by adding the word "and" at the end of paragraph (*d*.1), by striking out the word "and" at the end of paragraph (*e*) and by repealing paragraph (*f*).

(4) Subsections (1) to (3) apply to taxation years that end after 1999.

78. (1) Paragraph 142.6(1)(*b*) of the Act is replaced by the following:

(*b*) if the taxpayer becomes a financial institution, the taxpayer is deemed to have disposed, immediately before the end of its particular taxation year that ends immediately before the particular time and for proceeds equal to its fair market value at the time of that disposition, of each property held by the taxpayer that is

(i) a specified debt obligation, or

(ii) a mark-to-market property of the taxpayer for the particular taxation year or for the taxpayer's taxation year that includes the particular time.

(2) Paragraph 142.6(1)(*d*) of the Act is replaced by the following:

(*d*) the taxpayer is deemed to have reacquired, at the end of its taxation year that ends immediately before the particular time, each property deemed by paragraph (*b*) or (*c*) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property.

(3) Subsections (1) and (2) apply to taxation years that end after 1998.

79. (1) Subsection 142.7(8) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) for the purpose of applying subparagraph 212(1)(*b*)(vii) in respect of the debt obligation, the obligation is deemed to have been issued by the entrant bank at the time that the obligation was issued by the Canadian affiliate.

(2) Subsection (1) applies after June 27, 1999.

80. (1) The portion of subsection 143(3.1) of the Act before the description of B is replaced by the following:

Election in respect of gifts

(3.1) For the purposes of section 118.1, where the eligible amount of a gift made in a taxation year by an *inter vivos* trust referred to in subsection (1) in respect of a congregation would, but for this subsection, be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of the trust for the year and the trust so elects in its return of income under this Part for the year,

(*a*) the trust is deemed not to have made the gift; and

(*b*) each participating member of the congregation is deemed to have made, in the year, such a gift the eligible amount of which is the amount determined by the formula

$$A \times B/C$$

where

A is the eligible amount of the gift made by the trust,

(2) Subsection (1) applies to gifts made after December 20, 2002.

80.1 (1) The heading before section 143.2 of the Act is replaced by the following:

Cost of Tax Shelter Investments and Limited-Recourse Debt in respect of Gifting Arrangements

(2) Section 143.2 of the Act is amended by adding the following after subsection (6):

Limited-recourse debt in respect of a gift or monetary contribution

(6.1) The limited-recourse debt in respect of a gift or monetary contribution of a taxpayer, at the time the gift or monetary contribution is made, is the total of

(*a*) each limited-recourse amount at that time, of the taxpayer and of all other taxpayers not dealing at arm's length with the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution,

(*b*) each limited-recourse amount at that time, determined under this section when this section is applied to each other taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution, and

(*c*) each amount that is the unpaid amount at that time of any other indebtedness, of any taxpayer referred to in paragraph (*a*) or (*b*), that can reasonably be considered to relate to the gift or monetary contribution if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness.

(3) The portion of subsection 143.2(13) of the Act before paragraph (*a*) is replaced by the following:

Information located outside Canada

(13) For the purpose of this section, where it can reasonably be considered that information relating to indebtedness that relates to a taxpayer's expenditure, gift or monetary contribution is available outside Canada and the Minister is not satisfied that the unpaid principal of the indebtedness is not a limited-recourse amount, the unpaid principal of

the indebtedness relating to the taxpayer's expenditure, gift or monetary contribution is deemed to be a limited-recourse amount relating to the expenditure, gift or monetary contribution unless

(4) Subsections (1) to (3) apply in respect of expenditures, gifts and monetary contributions made after February 18, 2003.

81. (1) Paragraph (*b*) of the definition "earned income" in subsection 146(1) of the Act is replaced by the following:

(*b*) an amount included under paragraph 56(1)(*b*), (*c*.1), (*c*.2), (*g*) or (*o*) in computing the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada,

(2) Paragraph (*d*) of the definition « revenu gagné » in subsection 146(1) of the French version of the Act is replaced by the following:

d) soit, dans le cas d'un contribuable visé au paragraphe 115(2), le total qui serait calculé en application de l'alinéa 115(2)*e*) à son égard pour l'année compte non tenu du renvoi à l'alinéa 56(1)*n*) au sous-alinéa 115(2)*e*)(ii), ni du sous-alinéa 115(2)*e*)(iv), à l'exception de toute partie de ce total qui est incluse, en application de l'alinea *c*), dans le total calculé selon la présente définition ou qui est exonérée de l'impôt sur le revenu au Canada par l'effet d'une disposition d'un accord ou convention fiscal conclu avec un autre pays et ayant force de loi au Canada,

(3) Subparagraph (*d*)(i) of the definition "earned income" in subsection 146(1) of the English version of the Act is replaced by the following:

(i) that paragraph were read without reference to subparagraph 115(2)(*e*)(iv), and

(4) Paragraph (*f*) of the definition "earned income" in subsection 146(1) of the Act is replaced by the following:

(*f*) an amount deductible under paragraph 60(*b*) or (*c*.1), or deducted under paragraph 60(*c*.2), in computing the taxpayer's income for the year,

(5) Paragraph (*h*) of the definition "earned income" in subsection 146(1) of the Act is replaced by the following:

(*h*) the portion of an amount included under subparagraph (*a*)(ii) or (*c*)(ii) in determining the taxpayer's earned income for the year because of paragraph 14(1)(*b*)

(6) Subparagraph 146(10.1)(*b*)(ii) of the Act is replaced by the following:

(ii) paragraphs 38(*a*) and (*b*) are to read with the fraction set out in each of those paragraphs replaced by the word "all".

(7) Subsections (1) and (4) apply to the 1997 and subsequent taxation years.

(8) Subsections (2) and (3) apply to the 1993 and subsequent taxation years.

(9) Subsection (5) applies to amounts included in computing income for taxation years in respect of business fiscal periods that end after February 27, 2000.

82. (1) The definition "quarter" in subsection 146.01(1) of the Act is repealed.

(2) Subsection 146.01(8) of the Act is repealed.

(3) Subsections (1) and (2) apply in respect of the 2002 and subsequent taxation years.

83. (1) Subsection 146.1(2) of the Act is amended by adding the following after paragraph (*g*.2):

(*g*.3) the plan provides that an individual is permitted to be designated as a beneficiary under the plan, and that a contribution to the plan in respect of an individual who is a beneficiary under the plan is permitted to be made, only if

(i) in the case of a designation, the individual's Social Insurance Number is provided to the promoter before the designation is made and either

(A) the individual is resident in Canada when the designation is made, or

(B) the designation is made in conjunction with a transfer of property into the plan from another registered education savings plan under which the individual was a beneficiary immediately before the transfer, and

(ii) in the case of a contribution, either

(A) the individual's Social Insurance Number is provided to the promoter before the contribution is made and the individual is resident in Canada when the contribution is made, or

(B) the contribution is made by way of transfer from another registered education savings plan under which the individual was a beneficiary immediately before the transfer;

(2) Section 146.1 of the Act is amended by adding the following after subsection (2.2):

Social Insurance Number not required

(2.3) Notwithstanding paragraph (2)(*g*.3), an education savings plan may provide that an individual's Social Insurance Number need not be provided in respect of

(*a*) a contribution to the plan, if the plan was entered into before 1999; and

(*b*) a designation of a non-resident individual as a beneficiary under the plan, if the individual was not assigned a Social Insurance Number before the designation is made.

(3) Subsections (1) and (2) apply after 2003.

84. (1) Paragraph (*b*) of the definition "annuitant" in subsection 146.3(1) of the English version of the Act is replaced by the following:

(*b*) after the death of the first individual, a spouse or common-law partner (in this definition referred to as the "survivor") of the first individual to whom the carrier has undertaken to make payments described in the definition "retirement income fund" out of or under the fund after the death of the first individual, if the survivor is alive at that time and the undertaking was made

(i) pursuant to an election that is described in that definition and that was made by the first individual, or

(ii) with the consent of the legal representative of the first individual, and

(2) The portion of paragraph 146.3(2)(*c*) of the English version of the Act before subparagraph (i) is replaced by the following:

(*c*) if the carrier is a person referred to as a depositary in section 146, the fund provides that

(3) Paragraph 146.3(2)(*f*) of the Act is amended by striking out the word "or" at the end of subparagraph (vi), by adding the word "or" at the end of subparagraph (vii) and by adding the following after subparagraph (vii):

(viii) a deferred profit sharing plan in accordance with subsection 147(19);

(4) The portion of subsection 146.3(5.1) of the English version of the Act before paragraph (*a*) is replaced by the following:

Amount included in income

(5.1) Where at any time in a taxation year a particular amount in respect of a registered retirement income fund that is a spousal or common-law partner plan (within the meaning assigned by subsection 146(1)) in relation to a taxpayer is required to be included in the income of the taxpayer's spouse or common-law partner and the taxpayer is not living separate and apart from the taxpayer's spouse or common-law partner at that time by reason of the breakdown of their marriage or common-law partnership, there shall be included at that time in computing the taxpayer's income for the year an amount equal to the least of

(5) The portion of subsection 146.3(9) of the Act before paragraph (*a*) is replaced by the following:

Tax payable on income from non-qualified investment

(9) If a trust that is governed by a registered retirement income fund holds, at any time in a taxation year, a property that is not a qualified investment,

(6) Subparagraph 146.3(9)(*b*)(ii) of the Act is replaced by the following:

(ii) paragraphs 38(*a*) and (*b*) are to be read with the fraction set out in each of those paragraphs replaced by the word "all".

(7) Subsections (1) and (4) apply to the 2001 and subsequent taxation years except that, if a taxpayer and a person have jointly

elected under section 144 of the *Modernization of Benefits and Obligations Act*, in respect of the 1998, 1999 or 2000 taxation years, subsections (1) and (4) apply to the taxpayer and the person in respect of the applicable taxation year and subsequent taxation years.

(8) Subsection (2) applies after 2001.

(9) Subsection (3) applies after March 20, 2003.

(10) Subsection (5) applies to the 2003 and subsequent taxation years.

85. (1) Paragraph 147(2)(*e*) of the Act is replaced by the following:

(*e*) the plan includes a provision stipulating that no right of a person under the plan is capable of any surrender or assignment other than

(i) an assignment under a decree, order or judgment of a competent tribunal, or under a written agreement, that relates to a division of property between an individual and the individual's spouse or common-law partner, or former spouse or common-law partner, in settlement of rights that arise out of, or on a breakdown of, their marriage or common-law partnership,

(ii) an assignment by a deceased individual's legal representative on the distribution of the individual's estate, and

(iii) a surrender of benefits to avoid revocation of the plan's registration;

(2) Subsection 147(5.11) of the Act is repealed.

(3) Subparagraph 147(19)(*b*)(ii) of the Act is replaced by the following:

(ii) who is a spouse or common-law partner, or former spouse or common-law partner, of an employee or former employee referred to in subparagraph (i) and who is entitled to the amount

(A) as a consequence of the death of the employee or former employee, or

(B) under a decree, order or judgment of a competent tribunal, or under a written agreement, that relates to a division of property between the employee or former employee and the individual in settlement of rights that arise out of, or on a breakdown of, their marriage or common-law partnership,

(4) The portion of paragraph 147(19)(*d*) of the French version of the Act before subparagraph (i) is replaced by the following:

d) le montant est transféré directement à l'un des régimes ou fonds suivants au profit du particulier :

(5) Paragraph 147(19)(*d*) of the Act is amended by striking out the word "or" at the end of subparagraph (ii), by adding the word "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

(6) Subsection (1) applies after March 20, 2003.

(7) Subsection (2) applies to cessations of employment that occur after 2002.

(8) Subsections (3) to (5) apply to transfers that occur after March 20, 2003.

86. (1) The definition « versement admissible » in subsection 148.1(1) of the French version of the Act is replaced by the following:

"versement admissible"
« relevant contribution »

« versement admissible » Est un versement admissible effectué pour un particulier dans le cadre d'un arrangement donné :

a) le versement effectué dans le cadre de l'arrangement donné en vue du financement de services de funérailles ou de cimetière relatifs au particulier, à l'exception d'un versement effectué au moyen d'un transfert d'un arrangement de services funéraires;

b) la partie d'un versement effectué dans le cadre d'un arrangement de services funéraires (à l'exception d'un tel versement effectué au moyen d'un transfert d'un arrangement de services funéraires) qu'il est raisonnable de considérer comme ayant ultérieurement servi à effectuer un versement dans le cadre de l'arrangement donné au moyen d'un transfert d'un arrangement de services funéraires en vue du financement de services de funérailles ou de cimetière relatifs au particulier.

(2) The description of C in subsection 148.1(3) of the Act is replaced by the following:

C is the amount determined by the formula

$$D - E$$

where

D is the total of all relevant contributions made before the particular time in respect of the individual under the particular arrangement (other than contributions in respect of the individual that were in a cemetery care trust), and

E is the total of all amounts each of which is the amount, if any, by which

(*a*) an amount relating to the balance in respect of the individual under the arrangement that is deemed by subsection (4) to have been distributed before the particular time from the arrangement

exceeds

(*b*) the portion of the amount referred to in paragraph (*a*) that is added, because of this subsection, in computing a taxpayer's income.

(3) Section 148.1 of the Act is amended by adding the following after subsection (3):

Deemed distribution on transfer

(4) If at a particular time an amount relating to the balance in respect of an individual (referred to in this subsection and subsection (5) as the "transferor") under an eligible funeral arrangement (referred to in this subsection and subsection (5) as the "transferor arrangement") is transferred, credited or added to the balance in respect of the same or another individual (referred to in this subsection and subsection (5) as the "recipient") under the same or another eligible funeral arrangement

(referred to in this subsection and subsection (5) as the "recipient arrangement"),

(*a*) the amount is deemed to be distributed to the transferor (or, if the transferor is deceased at the particular time, to the recipient) at the particular time from the transferor arrangement and to be paid from the balance in respect of the transferor under the transferor arrangement; and

(*b*) the amount is deemed to be a contribution made (other than by way of a transfer from an eligible funeral arrangement) at the particular time under the recipient arrangement for the purpose of funding funeral or cemetery services with respect to the recipient.

Non-application of subsection (4)

(5) Subsection (4) does not apply if

(*a*) the transferor and the recipient are the same individual;

(*b*) the amount that is transferred, credited or added to the balance in respect of the individual under the recipient arrangement is equal to the balance in respect of the individual under the transferor arrangement immediately before the particular time; and

(*c*) the transferor arrangement is terminated immediately after the transfer.

(4) Subsections (2) and (3) apply to amounts that are transferred, credited or added after December 20, 2002.

87. (1) Paragraph 149(1)(*d*.5) of the Act is replaced by the following:

Income within boundaries of entities

(*d*.5) subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the entities does not exceed 10% of its income for the period;

(2) Subparagraphs 149(1)(*d*.6)(i) and (ii) of the Act are replaced by the following:

(i) if paragraph (*d*.5) applies to the other corporation, commission or association, the geographical boundaries of the entities referred to in that paragraph in its application to that other corporation, commission or association, or

(ii) if this paragraph applies to the other corporation, commission or association, the geographical boundaries of the entities referred to in subparagraph (i) in its application to that other corporation, commission or association,

(3) The portion of subsection 149(1.2) of the Act before paragraph (*b*) is replaced by the following:

Income test

(1.2) For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, commission or association from activities carried on outside the geographical boundaries of a municipality or of a municipal or public body does not include income from activities carried on

(*a*) under an agreement in writing between

(i) the corporation, commission or association, and

(ii) a person who is Her Majesty in right of Canada or of a province, a municipality, a municipal or public body or a corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or of a province, by a municipality in Canada or by a municipal or public body in Canada

within the geographical boundaries of,

(iii) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(iv) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province,

(v) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality, and

(vi) where the person is a municipal or public body performing a function of government in Canada or a corporation controlled by such a body, the area described in subsection (11) in respect of the person; or

(4) Subsection 149(1.3) of the Act is replaced by the following:

Votes or de facto control

(1.3) Paragraphs (1)(*d*) to (*d*.6) do not apply in respect of a person's taxable income for a period in a taxation year if at any time during the period

(*a*) the person is a corporation shares of which are owned by one or more other persons that, in total, give them more than 10% of the votes that could be cast at a meeting of shareholders of the corporation, other than shares that are owned by one or more persons each of which is

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a commission, an association or a corporation, to which any of paragraphs (1)(*d*) to (*d*.6) apply; or

(*b*) the person is, or would be if the person were a corporation, controlled, directly or indirectly in any manner whatever, by a person, or by a group of persons that includes a person, who is not

(i) Her Majesty in right of Canada or of a province,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada, or

(iv) a corporation, a commission or an association, to which any of paragraphs (1)(*d*) to (*d*.6) apply.

(5) Section 149 of the Act is amended by adding the following after subsection (10):

Geographical boundaries — body performing government functions

(11) For the purpose of this section, the geographical boundaries of a municipal or public body performing a function of government are

(*a*) the geographical boundaries that encompass the area in respect of which an Act of Parliament or an agreement given effect by an Act of Parliament recognizes or grants to the body a power to impose taxes; or

(*b*) if paragraph (a) does not apply, the geographical boundaries within which that body has been authorized by the laws of Canada or of a province to exercise that function.

(6) Subsections (1) to (5) apply to taxation years that begin after May 8, 2000, except that for those taxation years that began before December 21, 2002, subsection 149(1.3) of the Act, as enacted by subsection (4), is to be read as follows:

(1.3) For the purposes of paragraph (1)(*d*.5) and subsection (1.2), 90% of the capital of a corporation that has issued share capital is owned by one or more entities, each of which is a municipality or a municipal or public body, only if the entities own shares of the capital stock of the corporation that give the entities 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation.

(7) Notwithstanding subsections 152(4) to (5) of the Act, any assessment of a taxpayer's tax payable under the Act for any taxation year that began before ANNOUNCEMENT DATE shall be made that is necessary to give effect to the provisions of the Act enacted by subsections (1) to (6).

88. (1) Paragraphs (*c*) and (*d*) of the definition "charitable organization" in subsection 149.1(1) of the Act are replaced by the following:

(*c*) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization, and

(ii) each person who, and each member of a group of persons who do not deal with each other at arm's length that, has contributed or otherwise paid into the organization more than 50% of the capital of the organization (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(*l*)), and

(*d*) that is not, and would not be if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person that has contributed or otherwise paid into the organization more than 50% of the capital of the organization (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)), or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i);

(2) The portion of the description of A in the definition "disbursement quota" in subsection 149.1(1) of the Act before paragraph (*a*) is replaced by the following:

A is 80% of the total of all amounts each of which is the eligible amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

(3) The portion of the description of A.1 in the definition "disbursement quota" in subsection 149.1(1) of the Act before paragraph (*a*) is replaced by the following:

A.1 is 80% of the total of all amounts each of which is the eligible amount of a gift received in a preceding taxation year, to the extent that the eligible amount

(4) The definition "public foundation" in subsection 149.1(1) of the Act is replaced by the following:

"public foundation"
« fondation publique »

"public foundation" means a charitable foundation

(*a*) of which more than 50% of the directors, trustees, officers and like officials deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the foundation, and

(ii) each person who, and each member of a group of persons who do not deal with each other at arm's length that, has contributed or otherwise paid into the foundation more than 50% of the capital of the foundation (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(*l*)),

(*b*) that is not, and would not be if the foundation were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person that has contributed or otherwise paid into the foundation more than 50% of the capital of the organization (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)), or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i);

(5) Subsection 149.1(2) of the Act is amended by striking out the word "or" at the end of paragraph (*a*), by adding the word "or" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*c*) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift.

(6) Subsection 149.1(3) of the Act is amended by adding the following after paragraph (*b*):

(*b*.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(7) Subsection 149.1(4) of the Act is amended by adding the following after paragraph (*b*):

(*b*.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(8) The portion of subsection 149.1(9) of the Act after paragraph (*b*) is replaced by the following:

is, notwithstanding subsection 149.1(8), deemed to be income of the charity for, and the eligible amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in, its taxation year in which the period referred to in paragraph (*a*) expires or the time referred to in paragraph (*b*) occurs, as the case may be.

(9) Paragraph 149.1(15)(*b*) of the Act is replaced by the following:

(*b*) the Minister may make available to the public in such manner as the Minister considers appropriate a listing of all registered, or previously registered, charities and Canadian amateur athletic associations that indicates for each of them

(i) its name and address,

(ii) its registration number and date of registration, and

(iii) the effective date of any revocation, annulment or termination of its registration.

(10) Subsection (1) applies after 1999 except that, in respect of a charitable organization that was not designated as a private foundation or a public foundation under subsection 149.1(6.3) of the Act or under subsection 110(8.1) or (8.2) of the *Income Tax Act*, as enacted by chapter 148 of the Revised Statutes of Canada, 1952, and has not applied after February 15, 1984 for registration under paragraph 110(8)(*c*) of that Act or under the definition "registered

charity" in subsection 248(1) of the *Income Tax Act*, subparagraph (*c*)(ii) of the definition "charitable organization" in subsection 149.1(1) of the Act, as enacted by subsection (1), applies after 2004.

(11) Subsections (2) and (3) and (5) to (7) apply to gifts made after December 20, 2002.

(12) Subsection (4) applies after 1999 except that, in respect of a charitable organization that was not designated as a private foundation or a charitable organization under subsection 149.1(6.3) of the Act or under subsection 110(8.1) or (8.2) of the *Income Tax Act*, as enacted by chapter 148 of the Revised Statutes of Canada, 1952, and has not applied after February 15, 1984 for registration under paragraph 110(8)(*c*) of that Act or under the definition "registered charity" in subsection 248(1) of the *Income Tax Act*, paragraph (*b*) of the definition "public foundation" in subsection 149.1(1) of the Act, as enacted by subsection (4), is in its application before 2005 to be read

(*a*) without reference to the expression "(other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(*l*))"; and

(*b*) as if the reference to "50%" in that paragraph were read as a reference to "75%".

(13) Subsection (8) applies after December 20, 2002.

(14) An application referred to in subsection 149.1(6.3) of the *Income Tax Act*, in respect of one or more taxation years after 1999, may be made after 1999 and before the 90th day after this Act is assented to. If a designation referred to in that subsection for any of those taxation years is made in response to the application, the charity is deemed to be registered as a charitable organization, a public foundation or a private foundation, as the case may be, for the taxation years that the Minister of National Revenue specifies.

89. (1) The portion of subsection 152(1.2) of the Act before paragraph (*a*) is replaced by the following:

Provisions applicable

(1.2) Paragraphs 56(1)(*l*) and 60(*o*), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with any modifications that the circumstances require, to a determination or a redetermination of an amount under this Division or an amount deemed under section 122.61 to be an overpayment on account of a taxpayer's liability under this Part, except that

(2) Subsections 152(3.4) and (3.5) of the Act are repealed.

(3) Subsections (1) and (2) apply in respect of forms filed after March 20, 2003.

90. (1) Paragraph 157(3)(*c*) of the Act is replaced by the following:

(*c*) if the corporation is a mutual fund corporation, 1/12 of the total of

(i) the corporation's capital gains refund (within the meaning assigned by section 131) for the year, and

(ii) the amount that, because of subsection 131(5) or, where the corporation is a prescribed labour-sponsored venture capital corporation, because of subsection 131(11), is the corporation's dividend refund (within the meaning assigned by section 129) for the year,

(2) Subsection (1) applies to the 1999 and subsequent taxation years.

91. (1) Subsection 159(3) of the Act is replaced by the following:

Personal liability

(3) If a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection,

(*a*) the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed;

(*b*) the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection; and

(*c*) the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152 in respect of taxes payable under this Part.

(2) Subsection (1) applies to assessments made after December 20, 2002.

92. (1) The portion of subsection 160(1) of the Act after subparagraph (*e*)(i) is replaced by the following:

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

(2) The portion of subsection 160(1.1) of the Act after the description of B is replaced by the following:

but nothing in this subsection limits the liability of the other taxpayer under any other provision of this Act or of any person for the interest that the person is liable to pay under this Act on an assessment in respect of the amount that the person is liable to pay because of this subsection.

(3) Paragraphs 160(1.2) (*a*) and (*b*) of the Act are replaced by the following:

(*a*) carried on a business that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year,

(*b*) was a specified shareholder of a corporation that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year,

(4) Paragraph 160(1.2)(*d*) of the Act is replaced by the following:

(*d*) was a shareholder of a professional corporation that was provided property or services by a partnership or trust all or a portion of the income of which partnership or trust is directly or indirectly included in computing the individual's split income for the year, or

(5) Subsection 160(1.2) of the Act is amended by striking out the period after paragraph (*e*) and by adding the following after paragraph (*e*):

but nothing in this subsection limits the liability of the specified individual under any other provision of this Act or of the parent for the interest that the parent is liable to pay under this Act on an assessment in respect of the amount that the parent is liable to pay because of this subsection.

(6) Subsection 160(2) of the Act is replaced by the following:

Assessment

(2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(7) Subsections (1), (2), (5) and (6) apply in respect of assessments made after December 20, 2002.

(8) Subsections (3) and (4) apply after December 20, 2002.

93. (1) Subsection 160.1(3) of the Act is replaced by the following:

Assessment

(3) The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of subsection (1) or (1.1) or for which the taxpayer is liable because of subsection (2.1) or (2.2), and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section, as though it were made under section 152 in respect of taxes payable under this Part, except that no interest is payable on an amount assessed in respect of an excess referred to in subsection (1) that can reasonably be considered to arise as a consequence of the operation of section 122.5 or 122.61.

(2) Subsection (1) applies to assessments made after December 20, 2002.

94. (1) The portion of subsection 160.2(1) of the Act after paragraph (*b*) is replaced by the following:

the taxpayer and the last annuitant under the plan are jointly and severally, or solidarily, liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146(8.8) that the total of all amounts each of which is an amount determined under paragraph (*b*) in respect of the taxpayer is of the amount included in computing the annuitant's income because of that subsection, but nothing in this subsection limits the liability of the annuitant under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

(2) The portion of subsection 160.2(2) of the Act after paragraph (*b*) is replaced by the following:

the taxpayer and the annuitant are jointly and severally, or solidarily liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146.3(6) that the amount determined under paragraph (*b*) is of the amount included in computing the annuitant's income because of that subsection, but nothing in this subsection limits the liability of the annuitant under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

(3) Subsection 160.2(3) of the Act is replaced by the following:

Assessment

(3) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(4) Subsections (1) to (3) apply to assessments made after December 20, 2002.

95. (1) Subsections 160.3(1) and (2) of the Act are replaced by the following:

Liability in respect of amounts received out of or under RCA trust

160.3 (1) If an amount required to be included in the income of a taxpayer because of paragraph 56(1)(*x*) is received by a person with whom the taxpayer is not dealing at arm's length, that person is jointly and severally, or solidarily, liable with the taxpayer to pay a part of the taxpayer's tax under this Part for the taxation year in which the amount is received equal to the amount by which the taxpayer's tax for the year exceeds the amount that would be the taxpayer's tax for the year if the amount had not been received, but nothing in this subsection limits the liability of the taxpayer under any other provision of this Act or of the person for the interest that the person is liable to pay under this Act on an assessment in respect of the amount that the person is liable to pay because of this subsection.

Asessement

(2) The Minister may at any time assess a person in respect of any amount payable because of this section and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(2) Subsection (1) applies to assessments made after December 20, 2002.

96. (1) Subsection 160.4(1) of the Act is replaced by the following:

Liability in respect of transfers by insolvent corporations

160.4 (1) If property is transferred at any time by a corporation to a taxpayer with whom the corporation does not deal at arm's length at that time and the corporation is not entitled because of subsection 61.3(3) to deduct an amount under section 61.3 in computing its income for a taxation year because of the transfer or because of the transfer and one or more other transactions, the taxpayer is jointly and severally, or solidarily, liable with the corporation to pay the lesser of the corporation's tax payable under this Part for the year and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the corporation under any other provision of this Act or of the taxpayer for the interest that the taxpayer is liable to pay under this Act on an assessment in respect of the amount that the taxpayer is liable to pay because of this subsection.

(2) The portion of subsection 160.4(2) of the Act after paragraph (c) is replaced by the following:

the transferee is jointly and severally, or solidarily, liable with the transferor and the debtor to pay an amount of the debtor's tax under this Part equal to the lesser of the amount of that tax that the transferor was liable to pay at that time and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the debtor or the transferor under any provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

(3) Subsection 160.4(3) of the Act is replaced by the following:

Assessment

(3) The Minister may at any time assess a person in respect of any amount payable by the person because of this section and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section, as though it had been made under section 152 in respect of taxes payable under this Part.

(4) Subsections (1) to (3) apply to assessments made after December 20, 2002.

97. (1) Subsection 162(6) of the French version of the Act is replaced by the following:

Défaut de fournir son numéro d'identification

(6) Toute personne ou société de personnes qui ne fournit pas son numéro d'assurance sociale ou son numéro d'entreprise à la personne – tenue par la présente loi ou par une disposition réglementaire de remplir une déclaration de renseignements devant comporter ce numéro – qui lui enjoint de le fournir est passible d'une pénalité de 100 $ pour chaque défaut à moins que, dans les 15 jours après avoir été enjoint de fournir

ce numéro, il ait demandé qu'un numéro d'assurance sociale ou un numéro d'entreprise lui soit attribué et qu'il l'ait fourni à cette personne dans les 15 jours après qu'il l'a reçu.

(2) Subsection (1) applies after June 18, 1998.

98. (1) Paragraph 163(2)(*c*.1) of the Act is replaced by the following:

(*c*.1) the amount, if any, by which

(i) the total of all amounts each of which is an amount that would be deemed by section 122.5 to be paid by that person during a month specified for the year or, where that person is the qualified relation of an individual in relation to that specified month (within the meaning assigned by subsection 122.5(1)), by that individual, if that total were calculated by reference to the information provided in the person's return of income (within the meaning assigned by subsection 122.5(1)) for the year

exceeds

(ii) the total of all amounts each of which is an amount that is deemed by section 122.5 to be paid by that person or by an individual of whom the person is the qualified relation in relation to a month specified for the year (within the meaning assigned to subsection 122.5(1)),

(2) Subsection (1) applies to amounts deemed to be paid during months specified for the 2001 and subsequent taxation years.

99. (1) Section 164 of the Act is amended by adding the following after subsection (1.5):

Where (1.52) applies

(1.51) Subsection (1.52) applies to a taxpayer for a taxation year if, at any time after the beginning of the year

(*a*) the taxpayer has, in respect of the tax payable by the taxpayer under this Part (and, if the taxpayer is a corporation, Parts I.3, VI, VI.1 and XIII.1) for the year, paid under any of sections 155 to 157 one or more instalments of tax,

(*b*) it is reasonable to conclude that the total amount of those instalments exceeds the total amount of taxes that will be payable by the taxpayer under those Parts for the year, and (*c*) the Minister is satisfied that the payment of the instalments has caused or will cause undue hardship to the taxpayer.

Instalment refund

(1.52) If this subsection applies to a taxpayer for a taxation year, the Minister may refund to the taxpayer all or any part of the excess referred to in paragraph (1.51)(*b*).

Penalties, interest not affected

(1.53) For the purpose of the calculation of any penalty or interest under this Act, an instalment is deemed not to have been paid to the extent that all or any part of the instalment can reasonably be considered to have been refunded under subsection (1.52).

(2) Subsections 164(1.6) of the Act is repealed.

(3) The portion of subsection 164(3) of the Act before paragraph (*a*) is replaced by the following:

Interest on refunds and repayments

(3) If an amount in respect of a taxation year (other than an amount, or a portion of the amount, that can reasonably be considered to arise from the operation of section 122.5 or 122.61) is refunded or repaid under this section to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period that begins on the day that is the latest of

(4) Subsection (2) applies after March 20, 2003.

(5) Subsection (3) applies in respect of forms filed after March 20, 2003.

100. (1) Paragraph (*g*) of the definition "financial institution" in subsection 181(1) of Act is replaced by the following:

(*g*) a corporation

(i) listed in the schedule, or

(ii) all or substantially all of the assets of which are shares or indebtedness of financial institutions to which the corporation is related;

(2) Subsection (1) applies after December 22, 1997, but in applying paragraph (*g*) of the definition "financial institution" in subsection 181(1) of the Act, as enacted by subsection (1), in respect of taxation years that end before December 20, 2002, that paragraph is to be read as follows:

(*g*) prescribed, or listed in the schedule;

101. (1) Subparagraph 181.2(3)(*g*)(i) of the Act is replaced by the following:

(i) the total of all amounts (other than amounts owing to the member or to other corporations that are members of the partnership) that would, if this paragraph and paragraphs (*b*) to (*d*) and (*f*) applied to partnerships in the same way that they apply to corporations, be determined under those paragraphs in respect of the partnership at the end of its last fiscal period that ends at or before the end of the year

(2) Paragraph 181.2(3)(*i*) of the Act is replaced by the following:

(*i*) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year.

(3) Subsection 181.2(5) of the Act is replaced by the following:

Value of interest in partnership

(5) For the purposes of subsection (4) and this subsection, the carrying value at the end of a taxation year of an interest of a corporation or of a partnership (each of which is referred to in this subsection as the "member") in a particular partnership is deemed to be the member's specified proportion, for the particular partnership's last fiscal period that ends at or before the end of the taxation year, of the amount that would, if the particular partnership were a corporation, be the particular partnership's investment allowance at the end of that fiscal period.

(4) Subsections (1) and (3) apply to taxation years that begin after December 20, 2002.

(5) Subsection (2) applies to taxation years that begin after 1995.

(6) In applying paragraphs 181.2(4)(*b*), (*c*) and (*d*.1) of the Act to a particular corporation in respect of an asset that is a loan or an advance to, or an obligation of, another corporation or partnership

that the particular corporation holds at the end of a taxation year of the particular corporation that began before December 20, 2002, those paragraphs are to be read without reference to the expressions "(other than a financial institution)" and "(other than financial institutions)" if, at the end of the taxation year

(*a*) the particular corporation deals at arm's length with the other corporation or the partnership, as the case may be; and

(*b*) the other corporation is a financial institution, or the partnership is not a partnership described in paragraph 181.2(4)(*d*.1) of the Act, as the case may be, solely because of section 100 and subsections 124(1) and (3).

102. (1) Subparagraph 181.3(3)(*a*)(v) of the Act is replaced by the following:

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year, and

(2) Subparagraph 181.3(3)(*b*)(iv) of the Act is replaced by the following:

(iv) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year;

(3) Subparagraph 181.3(3)(*c*)(v) of the Act is replaced by the following:

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year,

(4) Paragraph 181.3(3)(*c*) of the Act is amended by adding the word "and" at the end of subparagraph (vi) and by adding the following after that subparagraph:

(vii) any amount recoverable through reinsurance, to the extent that the amount can reasonably be regarded as being included in the amount determined under subparagraph (iii) in respect of a claims reserve;

(5) Subparagraph 181.3(3)(*d*)(iv) of the Act is amended by striking out the word "and" at the end of clause (D), by replacing the semi-colon at the end of clause (E) with a comma, and by adding the following after clause (E):

(F) the total of all amounts each of which is an amount recoverable through reinsurance, to the extent that it can reasonably be regarded as being included in the amount determined under clause (A) in respect of a claims reserve; and

(6) Subsections (1) to (5) apply to taxation years that begin after 1995.

103. (1) Subsections 184(2) to (5) of the Act are replaced by the following:

Tax on excessive elections

(2) If a corporation has elected in accordance with subsection 83(2), 130.1(4) or 131(1) in respect of the full amount of any dividend payable by it on shares of any class of its capital stock (in this section referred to as the "original dividend") and the full amount of the original dividend exceeds the portion of the original dividend deemed by that subsection to be a capital dividend or capital gains dividend, as the case may be, the corporation shall, at the time of the election, pay a tax under this Part equal to 3/5 of the excess.

Election to treat excess as separate dividend

(3) If, in respect of an original dividend payable at a particular time, a corporation would, but for this subsection, be required to pay a tax under this Part in respect of an excess referred to in subsection (2), and the corporation elects in prescribed manner on or before the day that is 90 days after the day of mailing of the notice of assessment in respect of the tax that would otherwise be payable under this Part, the following rules apply:

(*a*) the portion of the original dividend deemed by subsection 83(2), 130.1(4) or 131(1) to be a capital dividend or capital gains dividend, as the case may be, is deemed for the purposes of this Act to be the amount of a separate dividend that became payable at the particular time;

(*b*) if the corporation identifies in its election any part of the excess, that part is, for the purposes of any election under subsection 83(2), 130.1(4) or 131(1) in respect of that part, and, where the corporation has so elected, for all purposes of this Act, deemed to be the amount of a separate dividend that became payable immediately after the particular time;

(*c*) the amount by which the excess exceeds any portion deemed by paragraph (*b*) to be a separate dividend for all purposes of this Act is deemed to be a separate taxable dividend that became payable at the particular time; and

(*d*) each person who held any of the issued shares of the class of shares of the capital stock of the corporation in respect of which the original dividend was paid is deemed

(i) not to have received any portion of the original dividend, and

(ii) to have received, at the time that any separate dividend determined under any of paragraphs (*a*) to (*c*) became payable, the proportion of that dividend that the number of shares of that class held by the person at the particular time is of the number of shares of that class outstanding at the particular time except that, for the purpose of Part XIII, the separate dividend is deemed to be paid on the day that the election in respect of this subsection is made.

Concurrence with election

(4) An election under subsection (3) is valid only if

(*a*) it is made with the concurrence of the corporation and all its shareholders

(i) who received or were entitled to receive all or any portion of the original dividend, and

(ii) whose addresses were known to the corporation; and

(*b*) either

(i) it is made on or before the day that is 30 months after the day on which the original dividend became payable, or

(ii) each shareholder described in subparagraph (*a*)(i) concurs with the election, in which case, notwithstanding subsections 152(4) to (5), any assessment of the tax, interest and penalties payable by each of those shareholders for any taxation year shall be made that is necessary to take the corporation's election into account.

Exception for non-taxable shareholders

(5) If each person who, in respect of an election made under subsection (3), is deemed by subsection (3) to have received a dividend at a particular time is also, at the particular time, a person all of whose taxable income is exempt from tax under Part I,

(*a*) subsection (4) does not apply to the election; and

(*b*) the election is valid only if it is made on or before the day that is 30 months after the day on which the original dividend became payable.

(2) Subsection (1) applies to original dividends paid by a corporation after its 1999 taxation year except that, for the purpose of subsection 184(5) of the Act, as enacted by subsection (1), an election made before the 90th day after this Act is assented to is deemed to have been made in a timely manner.

104. (1) The description of B in the formula in paragraph 188(1)(*a*) of the Act is replaced by the following:

B is the total of all amounts each of which is the eligible amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in the period (in this section referred to as the "winding-up period") that begins on the valuation day and ends immediately before the payment day, or an amount received by it in the winding-up period from a registered charity,

(2) Subsection (1) applies to gifts made after December 20, 2002.

105. (1) Subparagraph 190.13(*a*)(v) of the Act is replaced by the following:

(v) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares);

(2) Subparagraph 190.13(*b*)(iv) of the Act is replaced by the following:

(iv) the amount of any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares);

(3) Subsections (1) and (2) apply to taxation years that begin after 1995.

106. (1) Section 191 of the Act is amended by adding the following after subsection (5):

Excluded dividend – partner

(6) If at any time a corporation pays a dividend to a partnership, the corporation is, for the purposes of this subsection and paragraph (*a*) of the definition "excluded dividend" in subsection (1), deemed to have paid at that time to each member of the partnership a dividend equal to the amount determined by the formula

$$A \times B$$

where

A is the amount of the dividend paid to the partnership; and

B is the member's specified proportion for the last fiscal period of the partnership that ended before that time (or, if the partnership's first fiscal period includes that time, for that first fiscal period).

(2) Subsection (1) applies to dividends paid after December 20, 2002.

107. (1) Subparagraph 191.1(1)(*a*)(i) of the Act is replaced by the following:

(i) 50% of the amount, if any, by which the total of all taxable dividends (other than excluded dividends) paid by the corporation in the year on short-term preferred shares exceeds the corporation's dividend allowance for the year,

(2) Subsection (1) applies to dividends paid by a corporation in its 2003 and subsequent taxation years.

107.1 Section 200 of the French version of the Act is replaced by the following:

Distribution assimilée à une disposition

200. Pour l'application de la présente partie, la distribution par une fiducie d'un placement non admissible à un bénéficiaire de la fiducie est réputée être une disposition du placement, et le produit de disposition du placement est réputé être sa juste valeur marchande au moment de la distribution.

108. (1) Clause 204.81(1)(*c*)(v)(E) of the Act is replaced by the following:

(E) the redemption occurs

(I) more than eight years after the day on which the share was issued, or

(II) if the day that is eight years after that issuance is in February or March of a calendar year, in February or on March 1st of that calendar year but not more than 31 days before that day, or

(2) Section 204.81 of the Act is amended by adding the following after subsection (1):

Corporations incorporated before March 6, 1996

(1.1) In applying clause (1)(*c*)(v)(E) in relation to any time before 2004 in respect of a corporation incorporated before March 6, 1996, the references in that clause to the word "eight" are replaced with references to the word "five" if, at that time, the relevant statements in the corporation's articles refer to the word "five".

Deemed provisions in articles

(1.2) In applying subsection (1) in relation to any time before 2004, to a corporation incorporated before February 7, 2000, if the articles of the corporation comply with subclause (1)(*c*)(v)(E)(I) (as modified, where relevant, by subsection (1.1)), those articles are deemed to provide the statement required by subclause (1)(*c*)(v)(E)(II).

(3) Subsection (1) applies after February 6, 2000 to corporations incorporated at any time.

(4) Subsection (2) applies after February 6, 2000.

108.1 (1) The portion of subsection 204.9(5) of the French version of the Act before paragraph (*b*) is replaced by the following:

Transferts entre régimes

(5) Pour l'application de la présente partie, dans le cas où un bien détenu par une fiducie régie par un régime enregistré d'épargne-études (appelé « régime cédant » au présent paragraphe) est distribué, à un moment donné, à une fiducie régie par un autre semblable régime (appelé « régime cessionnaire » au présent paragraphe), les règles suivantes s'appliquent :

a) sauf disposition contraire énoncée aux alinéas *b*) et *c*), le montant de la distribution est réputé ne pas avoir été versé au régime cessionnaire;

(2) The portion of paragraph 204.9(5)(*c*) of the French version of the Act before subparagraph (i) is replaced by the following:

c) sauf pour l'application du présent paragraphe à une distribution effectuée après le moment donné, du paragraphe (4) à un remplacement de bénéficiaire effectué après ce moment et du paragraphe 204.91(3) à des faits s'étant produits après ce moment, l'alinéa *b*) ne s'applique pas par suite de la distribution si, selon le cas :

(3) Paragraph 204.9(5)(*d*) of the French version of the Act is replaced by the following:

d) dans le cas où les sous-alinéas *c*)(i) ou (ii) s'appliquent à la distribution, le montant de la distribution est réputé ne pas avoir été retiré du régime cédant;

109. (1) Clause (*g*)(ii)(D) of the definition « bien étranger » in the subsection 206(1) of the French version of the Act is replaced by the following:

(D) la Banque asiatique de développement,

(2) Subparagraphs (*b*)(i) to (iii) of the definition "cost amount" in subsection 206(1) of the Act are replaced by the following:

(i) after 2000 and at or before the end of the taxation year, by the trust in respect of the interest (otherwise than as proceeds of disposition of the interest), and

(ii) that has not been satisfied at or before that time by the issue of new units of the trust or by a payment of an amount by the trust;

(3) Paragraph (*d*.1) of the definition "foreign property" in subsection 206(1) of the Act is replaced by the following:

(*d*.1) any share (other than an excluded share) of the capital stock of, or any debt obligation (other than indebtedness described in subparagraph (*g*)(iii)) issued by, a corporation (other than an investment corporation, a mutual fund corporation or a registered investment) that is a Canadian corporation, if shares of the corporation can reasonably be considered to derive their value, directly or indirectly, primarily from foreign property,

(4) Paragraph (*g*) of the definition "foreign property" in subsection 206(1) of the Act is amended by striking out the word "or" at the end of subparagraph (i), by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) a particular indebtedness secured by a mortgage, an hypothec or a similar obligation in respect of real property situated in Canada, if the cost amount to a taxpayer of the particular indebtedness (together with the cost amount to a taxpayer of any other indebtedness in respect of the property that ranks equally with or superior to the particular indebtedness) does not exceed the fair market value of the property, except as a result of a decline in the fair market value of the property after the particular indebtedness is issued,

(5) The definition "specified proportion" in subsection 206(1) of the Act is repealed.

(6) The portion of subsection 206(3.1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Acquisition d'un titre déterminé

(3.1) Pour ce qui est de l'application du sous-alinéa (2)*a*)(ii) à un moment donné ou postérieurement, lorsqu'un titre déterminé par rapport à un autre titre est acquis au moment donné par le contribuable mentionné au paragraphe (3.2) relativement au titre et que le titre est un bien étranger à ce moment, les présomptions suivantes s'appliquent :

(7) Subsection (2) applies to months that end after December 20, 2002.

(8) Subsections (3) and (4) apply to months that end after October 2003.

(9) Subsection (5) applies after December 20, 2002.

(10) Subsection (6) applies to months that end after 1997.

110. (1) Sections 210 and 210.1 of the Act are replaced by the following:

Definitions and application

210. (1) The following definitions apply in this Part.

"designated beneficiary"
« bénéficiaire étranger ou assimilé »

"designated beneficiary", under a particular trust at any time, means a beneficiary, under the particular trust, who is at that time

(*a*) a non-resident person;

(*b*) a non-resident-owned investment corporation;

(*c*) a person who is, because of subsection 149(1), exempt from tax under Part I on all or part of their taxable income and who acquired an interest as a beneficiary under in the particular trust after October 1, 1987 directly or indirectly from a beneficiary under the particular trust except if

(i) the interest was, at all times after the later of October 1, 1987 and the day on which the interest was created, held by persons who were exempt from tax under Part I on all of their taxable income because of subsection 149(1), or

(ii) the person is a trust, governed by a registered retirement savings plan or a registered retirement income fund, who acquired the interest, directly or indirectly, from an individual or the spouse or common-law partner, or former spouse or common-law partner, of the individual who was, immediately after the interest was acquired, a beneficiary under the trust governed by the fund or plan;

(*d*) another trust (referred to in this paragraph as the "other trust") that is not a testamentary trust, a mutual fund trust or a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income, if any beneficiary under the other trust is at that time

(i) a non-resident person,

(ii) a non-resident-owned investment corporation,

(iii) a trust that is not

(A) a testamentary trust,

(B) a mutual fund trust,

(C) a trust that is exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income, or

(D) a trust

(I) whose interest, at that time, in the other trust was held, at all times after the day on which the interest was created, either by it or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income, and

(II) none of the beneficiaries under which is, at that time, a designated beneficiary under it, or

(iv) a person or partnership that

(A) is a designated beneficiary under the other trust because of paragraph (*c*) or (*e*), or

(B) would be a designated beneficiary under the particular trust because of paragraph (*c*) or (*e*) if, instead of being a beneficiary under the other trust, the person or partnership were at that time a beneficiary under the particular trust whose interest as a beneficiary under the particular trust were

(I) identical to its interest (referred to in this clause as the "particular interest") as a beneficiary under the other trust,

(II) acquired from each person or partnership from whom it acquired the particular interest, and

(III) held at all times after the later of October 1, 1987 and the day on which the particular interest was created, by the same persons or partnerships that held the particular interest at those times; or

(*e*) a particular partnership any of the members of which is at that time

(i) another partnership, except if

(A) each such other partnership is a Canadian partnership,

(B) the interest of each such other partnership in the particular partnership is held, at all times after the day on which the interest was created, by the other partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income,

(C) the interest of each member, of each such other partnership, that is a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income was held, at all times after the day on which the interest was created, by that member or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income, and

(D) the interest of the particular partnership in the particular trust was held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income,

(ii) a non-resident person,

(iii) a non-resident-owned investment corporation,

(iv) another trust that is, under paragraph (*d*), a designated beneficiary of the particular trust or that would, under paragraph (*d*), be a designated beneficiary of the particular trust if the other trust were at that time a beneficiary under the particular trust whose interest as a beneficiary under the particular trust were

(A) acquired from each person or partnership from whom the particular partnership acquired its interest as a beneficiary under the particular trust, and

(B) held at all times after the later of October 1, 1987 and the day on which the particular partnership's interest as a beneficiary under the particular trust was created, by the same persons or partnerships that held at those times that interest of the particular partnership, or

(v) a person exempt because of subsection 149(1) from tax under Part I on all or part of its taxable income except if the interest of the particular partnership in the particular trust was held, at all times after the day on which the interest was created, by the particular partnership or by persons who were exempt because of subsection 149(1) from tax under Part I on all of their taxable income.

"designated income"
« revenu de distribution »

"designated income", of a trust for a taxation year, means the amount that would be the income of the trust for the year determined under section 3 if

(*a*) this Act were read without reference to subsections 104(6), (12) and (30),

(*b*) it had no income other than taxable capital gains from dispositions described in paragraph (*c*) and incomes from

(i) real properties in Canada (other than Canadian resource properties),

(ii) timber resource properties,

(iii) Canadian resource properties (other than properties acquired by the trust before 1972), and

(iv) businesses carried on in Canada;

(*c*) the only taxable capital gains and allowable capital losses referred to in paragraph 3(*b*) were from

(i) dispositions of taxable Canadian property, and

(ii) dispositions of particular property (other than property described in any of subparagraphs 128.1(4)(*b*)(i) to (iii)), or property for which the particular property is substituted, that was transferred at any particular time to a particular trust in circumstances in which subsection 73(1) or 107.4(3) applied, if

(A) it is reasonable to conclude that the property was so transferred in anticipation that a person beneficially interested at the particular time in the particular trust would subsequently cease to reside in Canada, and a person beneficially interested at the particular time in the particular trust did subsequently cease to reside in Canada, or

(B) when the property was so transferred the terms of the particular trust satisfied the conditions in subparagraph 73(1.01)(*c*)(i) or (iii), and it is reasonable to conclude that the transfer was made in connection with the cessation of residence, on or before the transfer, of a person who was, at the time of the transfer, beneficially interested in the particular trust and a spouse or common-law partner, as the case may be, of the transferor of the property to the particular trust; and

(*d*) the only losses referred to in paragraph 3(*d*) were losses from sources described in any of subparagraphs (*b*)(i) to (iv).

Tax not payable

(2) No tax is payable under this Part for a taxation year by a trust that was throughout the year

(*a*) a testamentary trust;

(*b*) a mutual fund trust;

(*c*) exempt from tax under Part I because of subsection 149(1);

(*d*) a trust to which paragraph (*a*), (*a*.1) or (*c*) of the definition "trust" in subsection 108(1) applies; or

(*e*) non-resident.

(2) Subsection (1) applies to the 1996 and subsequent taxation years, except that paragraph (*c*) of the definition "designated income" in subsection 210(1) of the *Income Tax Act*, as amended by subsection (1), is to be read

(*a*) in respect of dispositions that occur after October 1, 1996 and before December 21, 2002, as follows:

"(*c*) the only taxable capital gains and allowable capital losses referred to in paragraph 3(*b*) were from dispositions of taxable Canadian property; and"**; and**

(*b*) in respect of dispositions that occur in a 1996 taxation year and before October 2, 1996, as follows:

"(*c*) the only taxable capital gains and allowable capital losses referred to in paragraph 3(*b*) were from dispositions of property that would have been taxable Canadian property if, at no time in the year, the trust had been resident in Canada; and".

112. (1) Subsection 210.2(2) of the Act is repealed.

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

113. (1) Subparagraph (i) of the description of B in paragraph 211.8(1)(*a*) of the Act is amended by striking out the word "or" at the end of clause (A) and by replacing clause (B) with the following:

(B) more than five years after its issuance, or

(C) if the day that is five years after its issuance is in February or March of a calendar year, in February or on March 1st of that calendar year but not more than 31 days before that day,

(2) Paragraph 211.8(1)(*a*) of the Act is amended by adding the following after subparagraph (i):

(i.1) nil, where the share was issued by a registered labour-sponsored venture capital corporation or a revoked corporation, the original acquisition of the share was after March 5, 1996 and the redemption, acquisition or cancellation is in February or on March 1st of a calendar year but is not more than 31 days before the day that is eight years after the day on which the share was issued,

(3) Subsections (1) and (2) apply to redemptions, acquisitions, cancellations and dispositions that occur after November 15, 1995.

114. (1) Subparagraph 212(1)(*b*)(iv) of the Act is replaced by the following:

(iv) interest payable to a person with whom the payer is dealing at arm's length and to whom a certificate of exemption that is in force on the day the amount is paid or credited was issued under subsection (14),

(2) The portion of subparagraph 212(1)(*b*)(xii) of the Act before clause (A) is replaced by the following:

(xii) interest payable by a lender under a securities lending arrangement, if the lender and the borrower deal with each other at arm's length and the lender is a financial institution prescribed for the purpose of clause (iii)(D), or a registered securities dealer resident in Canada, on money provided to the lender either as collateral or as consideration for the particular security lent or transferred under the arrangement where

(3) Paragraph 212(1)(*b*) of the Act is amended by striking out the word "and" at the end of subparagraph (xi), by adding the word "and" at the end of subparagraph (xii) and by adding the following after subparagraph (xii):

(xiii) an amount paid or credited under a securities lending arrangement that is deemed by subparagraph 260(8)(*c*)(i) to be a payment made by a borrower to a lender of interest if

(A) the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada, and

(B) the security that is transferred or lent to the borrower under the securities lending arrangement is described in paragraph (*b*) or (*c*) of the definition "qualified security" in subsection 260(1) and issued by a non-resident issuer;

(4) Subparagraph 212(1)(*c*)(ii) of the French version of the Act is replaced by the following:

(ii) peut raisonnablement être considérée, compte tenu des circonstances, y compris les modalités de la succession ou de l'acte de fiducie, comme la distribution d'un montant reçu par la succession ou la fiducie, ou comme une somme provenant d'un tel montant, au titre d'un dividende non imposable sur une action du capital-actions d'une société résidant au Canada;

(5) Subparagraph 212(1)(*d*)(xi) of the Act is amended by striking out the word "or" at the end of clause (B), by adding the word "or" at the end of clause (C) and by adding the following after clause (C):

(D) air navigation equipment utlized in the provision of services under the *Civil Air Navigation Services Commercialization Act* or computer software the use of which is necessary for the operation of that equipment that is used by the payer for no other purpose; or

(6) Paragraph 212(1)(*d*) of the Act is amended by striking out the word "or" at the end of subparagraph (x) and by adding the following after subparagraph (xi):

(xii) an amount to which subsection (5) would apply if that subsection were read without reference to the words "to the extent that the amount relates to that use or reproduction";

(7) Subsection 212(1) of the Act is amended by adding the following after paragraph (*h*):

Restrictive covenant amount

(*i*) an amount to which paragraph 56(1)(m) or subsection 56.4(2) applies;

(8) Section 212 of the Act is amended by adding the following after subsection (2):

Exempt dividends

(2.1) Subsection (2) does not apply to an amount paid or credited, by a borrower, under a securities lending arrangement if

(*a*) the amount is deemed by subparagraph 260(8)(*c*)(i) to be a dividend;

(*b*) the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada; and

(*c*) the security that is transferred or lent to the borrower under the securities lending arrangement is a share of a class of the capital stock of a non-resident corporation.

(9) Subsection 212(3) is amended by adding the word "and" at the end of paragraph (*a*) and by repealing paragraph (*b*).

(10) Subsection 212(5) of the French version of the Act is replaced by the following:

Films cinématographiques

(5) Toute personne non-résidente doit payer un impôt sur le revenu de 25 % sur toute somme qu'une personne résidant au Canada lui verse ou porte à son crédit, ou est réputée, en vertu de la partie I, lui verser ou porter à son crédit au titre ou en paiement intégral ou partiel d'un

droit sur les oeuvres ci-après qui ont été ou doivent être utilisées ou reproduites au Canada, ou d'un droit d'utilisation de telles oeuvres, dans la mesure où la somme se rapporte à cette utilisation ou reproduction :

a) un film cinématographique;

b) un film, une bande magnétoscopique ou d'autres procédés de reproduction à utiliser pour la télévision, sauf ceux utilisés uniquement pour une émission d'information produite au Canada.

(11) The portion of subsection 212(5) of the English version of the Act after paragraph (*b*) is replaced by the following:

that has been, or is to be, used or reproduced in Canada to the extent that the amount relates to that use or reproduction.

(12) Subsection 212(9) of the Act is amended by striking out the word "or" at the end of paragraph (*b*), by adding the word "or" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) a dividend or interest is received by a trust created under a reinsurance trust agreement, to which the Superintendent of Financial Institutions is a party, established in accordance with guidelines issued by the Superintendent relating to reinsurance arrangements with unregistered insurers

(13) Subsection 212(13) of the Act is amended by striking out the word "or" at the end of paragraph (*e*), by adding the word "or" at the end of paragraph (*f*) and by adding the following after paragraph (*f*):

(*g*) an amount to which paragraph 56(1)(*m*) or subsection 56.4(2) applies if that amount affects, or is intended to affect, in any way whatever,

(i) the acquisition or provision of property or services in Canada,

(ii) the acquisition or provision of property or services outside Canada by a person resident in Canada, or

(iii) the acquisition or provision outside Canada of a taxable Canadian property.

(14) Subsection 212(13.2) of the Act is replaced by the following:

Application of Part XIII tax where non-resident operates in Canada

(13.2) For the purposes of this Part, a particular non-resident person, who in a taxation year pays or credits to another non-resident person an amount other than an amount to which subsection (13) applies, is deemed to be a person resident in Canada in respect of the portion of the amount that is deductible in computing the particular non-resident person's taxable income earned in Canada for any taxation year from a source that is neither a treaty-protected business nor a treaty-protected property.

(15) Subparagraph (*b*)(i) of the description of B in subsection 212(19) of the Act is replaced by the following:

(i) 10 times the greatest amount determined, under the laws of the province or provinces in which the taxpayer is a registered securities dealer, to be the capital employed by the taxpayer at the end of the day, and

(16) Subsection (1) applies to the 1998 and subsequent taxation years.

(17) Subsection (2) applies to arrangements made after 2002.

(18) Subsections (3) and (8) apply to securities lending arrangements entered into after May 1995, except that in their application to arrangements made before 2002, each reference to the expression "subparagraph 260(8)(*c*)(i)" in subparagraph 212(1)(*b*)(xiii) and paragraph 212(2.1)(*a*) of the Act, as enacted by subsections (3) and (8), is to be read as a reference to the expression "subparagraph 260(8)(*a*)(i)".

(19) Subsection (5) applies to payments made after July 2003.

(20) Subsections (6), (10) and (11) apply to the 2000 and subsequent taxation years.

(21) Subsections (7) and (13) apply to amounts paid or credited after October 7, 2003.

(22) Subsection (9) applies to replacement obligations issued after 2000.

(23) Subsection (12) applies to amounts paid or credited after 2000 to non-resident persons.

(24) Subsection (14) applies to amounts paid or credited under obligations entered into after December 20, 2002.

(25) Subsection (15) applies to securities lending arrangements entered into after May 28, 1993.

114.1 Paragraph 214(3)(*k*) of the French version of the Act is replaced by the following:

k) le montant distribué par une fiducie au profit d'un athlète amateur à un moment donné, qui serait à inclure, en application du paragraphe 143.1(2), dans le calcul du revenu d'un particulier si la partie I s'appliquait est réputé avoir été payé au particulier à ce moment à titre de paiement relatif à une fiducie au profit d'un athlète amateur;

115. (1) The portion of subsection 216(1) of the Act before paragraph (*a*) is replaced by the following:

Alternatives re rents and timber royalties

216. (1) If an amount has been paid during a taxation year to a non-resident person or to a partnership of which that person was a member as, on account of, in lieu of payment of or in satisfaction of, rent on real property in Canada or a timber royalty, that person may, within two years (or, if that person has filed an undertaking described in subsection (4) in respect of the year, within six months) after the end of the year, file a return of income under Part I for that year in prescribed form. On so filing and without affecting the liability of the non-resident person for tax otherwise payable under Part I, the non-resident person is, in lieu of paying tax under this Part on that amount, liable to pay tax under Part I for the year as though

(2) The portion of subsection 216(5) of the Act before paragraph (*a*) is replaced with the following:

Disposition by non-resident

(5) If a person or a trust under which a person is a beneficiary has filed a return of income under Part I for a taxation year as permitted by this section or as required by section 150 and, in computing the amount of the person's income under Part I an amount has been deducted under paragraph 20(1)(*a*), or is deemed by subsection 107(2) to have been allowed under that paragraph, in respect of property that is real property in Canada, a timber resource property or a timber limit in Canada, the person shall file a return of income under Part I in prescribed form on or before the person's filing-due date for any subsequent taxation year

in which the person is non-resident and in which the person, or a partnership of which the person is a member, disposes of that property or any interest in it. On so filing and without affecting the person's liability for tax otherwise payable under Part I, the person is, in lieu of paying tax under this Part on any amount paid, or deemed by this Part to have been paid, in that subsequent taxation year in respect of any interest in that property to the person or to a partnership of which the person is a member, liable to pay tax under Part I for that subsequent taxation year as though

(3) Subsection 216(7) of the Act is repealed.

(4) Subsections (1) and (2) apply to taxation years that end after December 20, 2002.

115.1 (1) Paragraph 220(4.6)(*a*) of the French version of the Act is replaced by the following:

a) par le seul effet du paragraphe 107(5), les alinéas 107(2)*a*) à *c*) ne s'appliquent pas à une distribution de biens canadiens imposables effectuée par une fiducie au cours d'une année d'imposition (appelée « année de la distribution » au présent article);

(2) Paragraph 220(4.6)(*c*) of the French version of the Act is replaced by the following:

c) le ministre accepte, jusqu'à la date d'exigibilité du solde applicable à la fiducie pour une année d'imposition ultérieure, une garantie suffisante fournie par la fiducie, ou en son nom, au plus tard à la date d'exigibilité du solde qui lui est applicable pour l'année de la distribution pour le moins élevé des montants suivants :

(i) le montant obtenu par la formule suivante :

$$A - B - [((A - B)/A) \times C]$$

où :

A représente le total des impôts prévus par les parties I et I.1 qui seraient payables par la fiducie pour l'année de la distribution s'il n'était pas tenu compte de l'exclusion ou de la déduction de chaque montant visé à l'alinéa 161(7)*a*),

B le total des impôts prévus par ces parties qui auraient été ainsi payables si les règles énoncées au paragraphe 107(2) (sauf celle portant sur le choix prévu à ce paragraphe) s'étaient appliquées à chaque distribution, effectuée par la fiducie au cours de l'année de la distribution, de biens auxquels s'applique l'alinéa

a) (sauf les biens dont il est disposé ultérieurement avant le début de l'année ultérieure),

C le total des montants réputés par la présente loi ou une autre loi avoir été payés au titre de l'impôt de la fiducie en vertu de la présente partie pour l'année de la distribution,

(ii) si l'année ultérieure suit immédiatement l'année de la distribution, le montant déterminé selon le sous-alinéa (i); sinon, le montant déterminé selon le présent alinéa relativement à la fiducie pour l'année d'imposition précédant l'année ultérieure;

(3) The portion of subsection 220(4.61) of the French version of the Act before paragraph (*a*) is replaced by the following:

Restriction

(4.61) Malgré le paragraphe (4.6), le ministre est réputé, à un moment donné, ne pas avoir accepté de garantie aux termes de ce paragraphe pour l'année de la distribution d'une fiducie pour un montant supérieur à l'excédent éventuel du total visé à l'alinéa *a*) sur le total visé à l'alinéa *b*) :

(4) Paragraph 220(4.61)(*b*) of the French version of the Act is replaced by the following:

b) le total des impôts qui seraient déterminés selon l'alinéa *a*) si les alinéas 107(2)*a*) à *c*) s'étaient appliqués à chaque distribution effectuée par la fiducie au cours de l'année de biens auxquels s'applique l'alinéa (1)*a*).

116. (1) Paragraph 230(2)(*a*) of the French version of the Act is replaced by the following:

a) des renseignements sous une forme qui permet au ministre de déterminer s'il existe des motifs de révocation de l'enregistrement de l'organisme ou de l'association en vertu de la présente loi;

(2) Subsection 230(3) of the French version of the Act is replaced by the following:

Ordre du ministre quant à la tenue de registres

(3) Le ministre peut exiger de la personne qui n'a pas tenue les registres et livres de compte voulus pour l'application de la présente loi qu'elle tienne ceux qu'il spécifie. Dès lors, la personne doit tenir les registres et livres de compte qui sont ainsi exigés d'elle.

116.1 (1) Paragraph (*b*) of the definition "gifting arrangement" in subsection 237.1(1) of the Act is replaced by the following:

(*b*) incur a limited-recourse debt, determined under subsection 143.2(6.1), that can reasonably be considered to relate to a gift to a qualified donee or a monetary contribution referred to in subsection 127(4.1);

(2) Subsection (1) applies in respect of gifts and monetary contributions made after 6:00 p.m. (EST) on December 5, 2003.

117. (1) Paragraph 241(4)(*d*) of the Act is amended by striking out the word "or" at the end of subparagraph (xiii) and by adding the following after subparagraph (xiv):

(xv) to a person employed or engaged in the service of an office or agency, of the government of Canada or of a province, whose mandate includes the provision of assistance (as defined by subsection 125.4(1) or 125.5(1)) in respect of film or video productions or film or video production services, solely for the purpose of the administration or enforcement of the program under which the assistance is offered, or

(xvi) to an official of the Canadian Radio-television and Telecommunications Commission, solely for the purpose of the administration or enforcement of a regulatory function of that Commission;

(2) Section 241 of the Act is amended by adding the following after subsection (8):

Information may be communicated

(9) The Minister of Canadian Heritage may communicate or otherwise make available to the public, in any manner that that Minister considers appropriate, the following taxpayer information in respect of a Canadian film or video production certificate (as defined under subsection 125.4(1)) that has been issued or revoked:

(*a*) the title of the production for which the Canadian film or video production certificate was issued;

(*b*) the name of the taxpayer to whom the Canadian film or video production certificate was issued;

(*c*) the names of the producers of the production;

(*d*) the names of the individuals in respect of whom and places in respect of which that Minister has allotted points in respect of the production in accordance with Regulations made for the purpose of section 125.4;

(*e*) the total number of points so allotted; and

(*f*) any revocation of the Canadian film or video production certificate.

118. (1) The definition "common-law partner" in subsection 248(1) of the Act is replaced by the following:

"common-law partner"
« conjoint de fait »

"common-law partner", with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(*a*) has so cohabited throughout the twelve-month period that ends at that time, or

(*b*) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(*c*) and (*e*) and subparagraph 252(2)(*a*)(iii),

and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

(2) The definition "dividend rental arrangement" in subsection 248(1) of the Act is replaced by the following:

"dividend rental arrangement"
« mécanisme de transfert de dividendes »

"dividend rental arrangement", of a person or a partnership (each of which is referred to in this definition as the "person"),

(*a*) means any arrangement entered into by the person where it can reasonably be considered that

(i) the main reason for the person entering into the arrangement was to enable the person to receive a dividend on a share of the capital stock of a corporation, other than a dividend on a prescribed share or on a share described in paragraph (*e*) of the definition "term preferred share" in this subsection or an amount deemed by subsection 15(3) to be received as a dividend on a share of the capital stock of a corporation, and

(ii) under the arrangement someone other than that person bears the risk of loss or enjoys the opportunity for gain or profit with respect to the share in any material respect, and

(*b*) includes, for greater certainty, any arrangement under which

(i) a corporation at any time receives on a particular share a taxable dividend that would, if this Act were read without reference to subsection 112(2.3), be deductible in computing its taxable income or taxable income earned in Canada for the taxation year that includes that time, and

(ii) the corporation or a partnership of which the corporation is a member is obligated to pay to another person or partnership an amount

(A) that is compensation for

(I) the dividend described in subparagraph (i),

(II) a dividend on a share that is identical to the particular share, or

(III) a dividend on a share that, during the term of the arrangement, can reasonably be expected to provide to a holder of the share the same or substantially the same proportionate risk of loss or opportunity for gain as the particular share, and

(B) that, if paid, would be deemed by subsection 260(5.1) to have been received by that other person or partnership, as the case may be, as a taxable dividend;

(3) Subparagraph (*b*)(i) of the definition "disposition" in subsection 248(1) of the Act is replaced by the following:

(i) where the property is a share, bond, debenture, note, certificate, mortgage, agreement of sale or similar property, or a interest in it, the property is in whole or in part redeemed, acquired or cancelled;

(4) Subparagraphs (*f*)(i) and (ii) of the definition "disposition" in subsection 248(1) of the Act are replaced by the following:

(i) the transferor and the transferee are trusts that are, at the time of the transfer, resident in Canada

(5) The definition "disposition" in subsection 248(1) of the Act is amended by striking out the word "and" at the end of paragraph (*l*), by adding the word "and" at the end of paragraph (*m*) and by adding the following after paragraph (*m*):

(*n*) a redemption, an acquisition or a cancellation of a share, or of a right to acquire a share, (which share or which right, as the case may be, is referred to in this paragraph as the "security") of the capital stock of a corporation (referred to in this paragraph as the "issuing corporation") held by another corporation (referred to in this paragraph as the "disposing corporation") if

(i) the redemption, acquisition or cancellation occurs as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to in this paragraph as the "new corporation"),

(ii) the merger or combination is

(A) an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) does not apply,

(B) an amalgamation (within the meaning assigned by subsection 87(1)) to which subsection 87(11) applies , if the issuing corporation and the disposing corporation are described by subsection 87(11) as the parent and the subsidiary, respectively, or

(C) a foreign merger (within the meaning assigned by subsection 87(8.1)), and

(iii) either

(A) the disposing corporation receives no consideration for the security, or

(B) in the case of a foreign merger (within the meaning assigned by subsection 87(8.1)), the disposing corporation receives no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, becomes property of the new corporation;

(6) Paragraphs (*d*) and (*e*) of the definition "foreign resource property" in subsection 248(1) of the Act are replaced by the following:

(*d*) any right to a rental or royalty computed by reference to the amount or value of production from an oil or gas well in that country, or from a natural accumulation of petroleum or natural gas in that country, if the payer of the rental or royalty has an interest in the well or accumulation, as the case may be, and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the well or accumulation,

(*e*) any right to a rental or royalty computed by reference to the amount or value of production from a mineral resource in that country, if the payer of the rental or royalty has an interest in the mineral resource and 90% or more of the rental or royalty is payable out of, or from the proceeds of, the production from the mineral resource,

(7) Paragraph (*g*) of the definition "foreign resource property" in subsection 248(1) of the Act is replaced by the following:

(*g*) a right to or an interest in any property described in any of paragraphs (*a*) to (*f*), other than a right or an interest that the taxpayer has because the taxpayer is a beneficiary under a trust or a member of a partnership;

(8) The portion of the definition "former business property" in subsection 248(1) of the Act before paragraph (*a*) is replaced by the following:

"former business property"
« ancien bien d'entreprise »

"former business property", in respect of a taxpayer, means a capital property of the taxpayer that was used by the taxpayer or a person related to the taxpayer primarily for the purpose of gaining or producing income from a business, and that was real property of the taxpayer, an interest of the taxpayer in real property, or a property that is the subject of a valid election under subsection 13(4.2), but does not include

(9) Paragraph (*d*) of the definition « activités de recherche scientifique et de développement expérimental » in subsection 248(1) of the French version of the Act is replaced by the following:

d) les travaux entrepris par le contribuable ou pour son compte relativement aux travaux de génie, à la conception, à la recherche opérationnelle, à l'analyse mathématique, à la programmation informatique, à la collecte de données, aux essais et à la recherche psychologique, lorsque ces travaux sont proportionnels aux besoins des travaux visés aux alinéas *a*), *b*) ou *c*) qui sont entrepris au Canada par le contribuable ou pour son compte et servent à les appuyer directement.

(10) Paragraph (*g*) of the definition "fiducie pour l'environnement admissible" in subsection 248(1) of the French version of the Act is replaced by the following:

g) un montant a été distribué par elle avant le 23 février 1994;

(11) Subparagraph (*h*)(ii) of the definition "fiducie pour l'environnement admissible" in subsection 248(1) of the French version of the Act is replaced by the following:

(ii) un montant a été distribué par elle avant le 19 février 1997.

(12) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

"specified proportion"
« proportion déterminée »

"specified proportion", of a member of a partnership for a fiscal period of the partnership, means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of $1,000,000;

(13) Section 248 of the Act is amended by adding the following after subsection (1):

Non-disposition before December 24, 1998

(1.1) A redemption, an acquisition or a cancellation, at any particular time after 1971 and before December 24, 1998, of a share, or of a right to acquire a share, (which share or which right, as the case may be, is referred to in this subsection as the "security") of the capital stock of a corporation (referred to in this subsection as the "issuing corporation") held by another corporation (referred to in this subsection as the "disposing corporation") is not a disposition (within the meaning of the definition "disposition" in section 54 as that section read in its application to transactions and events that occurred at the particular time) of the security if

(*a*) the redemption, acquisition or cancellation occurred as part of a merger or combination of two or more corporations (including the issuing corporation and the disposing corporation) to form one corporate entity (referred to in this subsection as the "new corporation");

(*b*) the merger or combination is

(i) an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time did not apply,

(ii) an amalgamation (within the meaning assigned by subsection 87(1) as it read at the particular time) to which subsection 87(11) if in force, and as it read, at the particular time applies, if the issuing corporation and the disposing corporation are described by subsection 87(11) (if in force, and as it read, at the particular time) as the parent and the subsidiary, respectively, or

(iii) a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time); and (*c*) either

(i) the disposing corporation received no consideration for the security, or

(ii) in the case of a foreign merger (within the meaning assigned by subsection 87(8.1) as it read at the particular time), the disposing corporation received no consideration for the security other than property that was, immediately before the foreign merger, owned by the issuing corporation and that, on the foreign merger, became property of the new corporation.

(14) Paragraphs 248(8)(*a*) and (*b*) of the French version of the Act are replaced by the following:

a) un transfert, une distribution ou une acquisition de biens effectué en vertu du testament ou autre acte testamentaire d'un contribuable ou de son époux ou conjoint de fait, par suite d'un tel testament ou acte ou par l'effet de la loi en cas de succession *ab intestat* du contribuable ou de son époux ou conjoint de fait, est considéré comme un transfert, une distribution ou une acquisition de biens effectué par suite du décès du contribuable ou de son époux ou conjoint de fait, selon le cas;

b) un transfert, une distribution ou une acquisition de biens effectué par suite d'une renonciation ou d'un abandon par une personne qui était bénéficiaire en vertu du testament ou autre acte testamentaire d'un contribuable ou de son époux ou conjoint de fait, ou qui était héritier *ab intestat* de l'un ou l'autre, est considéré comme un transfert, une distribution ou une acquisition de biens effectué par suite du décès du contribuable ou de son époux ou conjoint de fait, selon le cas;

(15) Subsection 248(16) of the Act is replaced by the following:

Goods and services tax — input tax credit and rebate

(16) For the purposes of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax credit or rebate with respect to the goods and services tax in respect of a property or service is deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

(*a*) where the amount was claimed by the taxpayer as an input tax credit in a return under Part IX of the *Excise Tax Act* for a reporting period under that Act,

(i) at the particular time that is the earlier of the time that the goods and services tax in respect of the input tax credit was paid and the time that it became payable,

(A) if the particular time is in the reporting period, or

(B) if,

(I) the taxpayer's threshold amount, determined in accordance with subsection 249(1) of the *Excise Tax Act*, is greater than $500,000 for the taxpayer's fiscal year (within the meaning assigned by that Act) that includes the particular time, and

(II) the taxpayer claimed the input tax credit at least 120 days before the end of the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer in respect of the taxation year that includes the particular time,

(ii) at the end of the reporting period, if

(A) subparagraph (i) does not apply, and

(B) the taxpayer's threshold amount, determined in accordance with subsection 249(1) of the *Excise Tax Act*, is $500,000 or less for the fiscal year (within the meaning assigned by that Act) of the taxpayer that includes the particular time, and

(iii) in any other case, on the last day of the taxpayer's earliest taxation year

(A) that begins after the taxation year that includes the particular time, and

(B) for which the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer ends at least 120 days after the time that the input tax credit was claimed; or

(*b*) where the amount was claimed as a rebate with respect to the goods and services tax, at the time the amount was received or credited.

(16) Section 248 of the Act is amended by adding the following after subsection (16):

Quebec input tax refund and rebate

(16.1) For the purpose of this Act, other than this subsection and subsection 6(8), an amount claimed by a taxpayer as an input tax refund or a rebate with respect to the Quebec sales tax in respect of a property or service is deemed to be assistance from a government in respect of the property or service that is received by the taxpayer

(*a*) where the amount was claimed by the taxpayer as an input tax refund in a return under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, for a reporting period under that Act,

(i) at the particular time that is the earlier of the time that the Quebec sales tax in respect of the input tax refund was paid and the time that it became payable,

(A) if the particular time is in the reporting period, or

(B) if,

(I) the taxpayer's threshold amount, determined in accordance with section 462 of that Act is greater than $500,000 for the taxpayer's fiscal year (within the meaning assigned by that Act) that includes the particular time, and

(II) the taxpayer claimed the input tax refund at least 120 days before the end of the normal reassessment period, as determined under subsection 152(3.1), for the taxpayer in respect of the taxation year that includes the particular time,

(ii) at the end of the reporting period, if

(A) subparagraph (i) does not apply, and

(B) the taxpayer's threshold amount, determined in accordance with section 462 of that Act is $500,000 or less for the fiscal year (within the meaning assigned by that Act) of the taxpayer that includes the particular time, and

(iii) in any other case, on the last day of the taxpayer's earliest taxation year

(A) that begins after the taxation year that includes the particular time, and

(B) for which the normal reassessment period, as determined under subsection 152 (3.1), for the taxpayer ends at least 120 days after the time that the input tax refund was claimed; or

(*b*) where the amount was claimed as a rebate with respect to the Quebec sales tax, at the time the amount was received or credited.

(17) The portion of subsection 248(17) of the Act before the reading in quotation marks for subparagraphs 248(16)(*a*)(i) and (ii) is replaced by the following:

Application of subsection (16) to passenger vehicles and aircraft

(17) If the input tax credit of a taxpayer under Part IX of the *Excise Tax Act* in respect of a passenger vehicle or aircraft is determined with reference to subsection 202(4) of that Act, subparagraphs (16)(*a*)(i) to (iii) are to be read as they apply in respect of the passenger vehicle or aircraft, as the case may be, as follows:

(18) Section 248 of the Act is amended by adding the following after subsection (17):

Application of s. (16.1) to passenger vehicles and aircraft

(17.1) If the input tax refund of a taxpayer under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, in respect of a passenger vehicle or aircraft is determined with reference to section 252 of that Act, subparagraphs (16.1)(*a*)(i) to (iii) are to be read as they apply in respect of the passenger vehicle or aircraft, as the case may be, as follows:

"(i) at the beginning of the first taxation year or fiscal period of the taxpayer that begins after the end of the taxation year or fiscal period, as the case may be, in which the Quebec sales tax in respect of such property was considered for the purposes of determining the input tax refund to be payable, if the tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, or

(ii) if no such tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, at the end of the reporting period; or"

Input tax credit on assessment

(17.2) An amount in respect of an input tax credit that is deemed by subsection 296(5) of the *Excise Tax Act* to have been claimed in a return or application filed under Part IX of that Act is deemed to have been so claimed for the reporting period under that Act that includes the time when the Minister makes the assessment referred to in that subsection.

Quebec input tax refund on assessment

(17.3) An amount in respect of an input tax refund that is deemed by section 30.5 of *An Act respecting the Ministère du Revenu*, R.S.Q., c. M-31, to have been claimed is deemed to have been so claimed for the reporting period under *An Act respecting the Québec sales tax*, R.S.Q., c. T- 0.1, that includes the day on which an assessment is issued to the taxpayer indicating that the refund has been allocated under that section 30.5.

(19) Section 248 of the Act is amended by adding the following after subsection (18).

Repayment of Quebec input tax refund

(18.1) For the purposes of this Act, if an amount is added at a particular time in determining the net tax of a taxpayer under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, in respect of an input tax refund relating to property or service that had been previously deducted in determining the net tax of the taxpayer, that amount is deemed to be assistance repaid at the particular time in respect of the property or service under a legal obligation to repay all or part of that assistance.

(20) Subsection 248(25.1) of the Act is replaced by the following:

Trust-to-trust transfers

(25.1) Where at any time a particular trust transfers property to another trust (other than a trust governed by a registered retirement savings plan or by a registered retirement income fund) in circumstances to which paragraph (*f*) of the definition “disposition” in subsection (1) applies, without affecting the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) and paragraph 122(2)(*f*), the other trust is deemed to be after that time the same trust as, and a continuation of, the particular trust, and for greater certainty, if the property was deemed to be taxable Canadian property of the particular trust by paragraph 51(1)(*f*), 85(1)(*i*) or 85.1(1)(*a*), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(*c*) or 107(2)(*d*.1), the property is deemed to be taxable Canadian property of the other trust.

(21) Subparagraph 248(25.3)(*c*)(i) of the Act is replaced by the following:

(i) the particular unit is capital property and the amount is not proceeds of disposition of a capital interest in the trust, or

(22) Section 248 of the Act is amended by adding the following after subsection (29):

Eligible amount of gift or monetary contribution

(30) The eligible amount of a gift or monetary contribution is the amount by which the fair market value of the property that is the subject of the gift exceeds the amount of the advantage, if any, in respect of the gift.

Amount of advantage

(31) The amount of the advantage in respect of a gift or monetary contribution by a taxpayer is the total of

(*a*) the total of all amounts, other than an amount referred to in paragarph (*b*), each of which is the value, at the time the gift or monetary contribution is made, of any property, service, compensation or other benefit that the taxpayer, a person or person who does not deal at arm's length with the taxpayer, or another person or partnership who does not deal at arm's length with and holds, directly or indirectly, an interest in the taxpayer, has received, obtained or enjoyed, or is entitled, either immediately or in the future and either absolutely or contingently, to receive, obtain, or enjoy

(i) that is consideration for the gift or monetary contribution,

(ii) that is in gratitude for the gift or monetary contribution, or

(iii) that is in any other way related to the gift or monetary contribution; and (*b*) the limited-recourse debt, determined under subsection 143.2(6.1), in respect of the gift or monetary contribution at the time the gift or monetary contribution is made.

Intention to give

(32) The existence of an amount of an advantage in respect of a transfer of property does not in and by itself disqualify the transfer from being a gift to a qualified donee if

(*a*) the amount of the advantage does not exceed 80% of the fair market value of the transferred property; or

(*b*) the transferor of the property establishes to the satisfaction of the Minister that the transfer was made with the intention to make a gift.

Cost of property acquired by donor

(33) The cost to a taxpayer of a property, acquired by the taxpayer in circumstances where subsection (31) applies to include the value of the property in computing the amount of the advantage in respect of a gift or monetary contribution, is equal to the fair market value of the property at the time the gift or monetary contribution is made.

Repayment of limited-recourse debt

(34) If at any time in a taxation year a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness which was, before that time, an unpaid principal amount that was a limited-recourse debt referred to in subsection 143.2(6.1) (in this subsection referred to as the "former limited-recourse debt") in respect of a gift or monetary contribution (in this subsection referred to as the "original gift" or "original monetary contribution", respectively, as the case may be) of the taxpayer (otherwise than by way of assignment or transfer of a guarantee, security or similar indemnity or covenant, or by way of a payment in respect of which any taxpayer referred to in subsection 143.2(6.1) has incurred an indebtedness that would be a limited-recourse debt referred to in that subsection if that indebtedness were in respect of a gift or monetary contribution made at the time that that indebtedness was incurred), the following rules apply:

(*a*) if the former limited-recourse debt is in respect of the original gift, for the purposes of sections 110.1 and 118.1, the taxpayer is deemed to have made in the taxation year a gift to a qualified donee, the eligible amount of which deemed gift is the amount, if any, by which

(i) the amount that would have been the eligible amount of the original gift, if the total of all such repaid amounts paid at or before that time were paid immediately before the original gift was made,

exceeds

(ii) the total of

(A) the eligible amount of the original gift, and

(B) the eligible amount of all other gifts deemed by this paragraph to have been made before that time in respect of the original gift; and

(*b*) if the former limited-recourse debt is in respect of the original monetary contribution, for the purposes of subsection 127(3), the taxpayer is deemed to have made in the taxation year a monetary contribution referred to in that subsection, the eligible amount of which is the amount, if any, by which

(i) the amount that would have been the eligible amount of the original monetary contribution, if the total of all such repaid amounts paid at or before that time were paid immediately before the original monetary contribution was made,

exceeds

(ii) the total of

(A) the eligible amount of the original monetary contribution, and

(B) the eligible amount of all other monetary contributions deemed by this paragraph to have been made before that time in respect of the original monetary contribution.

Deemed fair market value

(35) For the purposes of subsection (30), paragraph 69(1)(*b*) and subsections 110.1(2.1) and (3) and 118.1(5.4) and (6), the fair market value of a property that is the subject of a gift made by a taxpayer to a qualified donee is deemed to be the lesser of the fair market value of the property otherwise determined and the cost, or in the case of capital

property, the adjusted cost base, of the property to the taxpayer immediately before the gift is made if

(*a*) the taxpayer acquired the property under a gifting arrangement within the meaning assigned by section 237.1; or

(*b*) except where the gift is made as a consequence of the taxpayer's death,

(i) the taxpayer acquired the property less than three years before the day that the gift is made, or

(ii) it is reasonable to conclude that, at the time the taxpayer acquired the property, the taxpayer expected to make a gift of the property.

Non-application of subsection (35)

(36) Subsection (35) does not apply to a gift

(*a*) of inventory;

(*b*) of real property situated in Canada;

(*c*) of an object referred to in subparagraph 39(1)(*a*)(i.1); or

(*d*) to which paragraph 38(*a*.1) or (*a*.2) applies.

Artificial transactions

(37) If it can reasonably be concluded that one of the reasons for a series of transactions, that includes a disposition or acquisition of a property of a taxpayer that is the subject of a gift by the taxpayer, is to increase the amount that would be deemed by subsection (35) to be the fair market value of the property, the cost of the property for the purpose of that subsection is deemed to be the lowest cost to the taxpayer to acquire that property or an identical property at any time.

Substantive gift

(38) If a taxpayer disposes of a property (in this subsection referred to as the "substantive gift") that is a capital property or an eligible capital property of the taxpayer, to a recipient that is a registered party, a provincial division of a registered party, a registered association or a candidate, as those terms are defined in the *Canada Elections Act*, or that is a qualified donee, subsection (35) would have applied in respect

of the substantive gift if it had been the subject of a gift by the taxpayer, and the proceeds of disposition of the substantive gift are (or are substituted, directly or indirectly in any manner whatever, for) property that is the subject of a gift or monetary contribution by the taxpayer to the recipient or any person dealing not at arm's length with the recipient, the following rules apply

(*a*) for the purpose of subsection (30), the fair market value of the property that is the subject of the gift or monetary contribution made by the taxpayer is deemed to be the lesser of the fair market value of the substantive gift and the cost, or if the substantive gift is capital property of the taxpayer, the adjusted cost base, of the substantive gift to the taxpayer immediately before the disposition to the recipient;

(*b*) if the substantive gift is capital property of the taxpayer, for the purpose of the definitions "proceeds of disposition" of property in subsection 13(21) and section 54, the sale price of the substantive gift is deemed to be the lesser of its fair market value and its adjusted cost base immediately before the disposition to the recipient; and

(*c*) if the substantive gift is eligible capital property of the taxpayer, the amount determined under paragraph (*a*) for Variable E in the definition "cumulative eligible capital" in subsection 14(5) in respect of the substantive gift is deemed to be the lesser of its fair market value and its cost immediately before the disposition to the recipient.

(23) Subsection (1) applies in determining whether a person is, for the 2001 and subsequent taxation years, a common-law partner of a taxpayer, except that subsection does not apply to so determine whether a person is a common-law partner of a taxpayer for a taxation year to which a valid election, made under section 144 of the *Modernization of Benefits and Obligations Act* applied before Announcement Date. However, on and after Announcement Date, no such election may be made to affect a current or subsequent taxation year.

(24) Subsection (2) applies

(*a*) to arrangements made after December 20, 2002; and

(*b*) to an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement jointly so elect in writing and file the election with the Minister of National Revenue within 90 days after this Act is assented to, except that the reference to the expression "subsection 260(5.1)" in clause (*b*)(ii)(B) of the definition "dividend rental arrangement" in subsection 248(1) of the Act, as enacted by subsection (2), is to be, in the application of that definition to any of those arrangements

made before 2002, read as a reference to the expression "subsection 260(5)".

(25) For arrangements made after 2001 and before December 21, 2002 other than an arrangement to which paragarph (24)(*b*) applies, the portion of paragraph (*d*) of the definition "dividend rental arrangement" in subsection 248(1) of the Act after subparagraph (iii) is to be read as follows:

> that, if paid, would be deemed by subsection 260(5.1) to have been received by that other person as a taxable dividend.

(26) Subsections (3) and (5) apply to redemptions, acquisitions and cancellations that occur after December 23, 1998 and, where a particular redemption, acquisition or cancellation occurs before December 21, 2002, any assessment of a taxpayer's tax, interest and penalties payable under the *Income Tax Act* for a taxation year that includes the time at which the particular redemption, acquisition or cancellation occurred shall, notwithstanding subsections 152(4) to (5) of that Act, be made that is necessary to take into account the application of subsections (3) and (5).

(27) Subsection (4) applies to transfers that occur after ANNOUNCEMENT DATE.

(28) Subsections (6) and (7) applies to property acquired after December 20, 2002.

(29) Subsection (8) applies in respect of dispositions and terminations that occur after December 20, 2002.

(30) Subsection (12) applies after December 20, 2002.

(31) In applying subsection 248(1.1) of the Act, as enacted by subsection (13), to a particular redemption, acquisition or cancellation, any assessment of a taxpayer's tax, interest and penalties payable under the *Income Tax Act* for a taxation year that includes the time at which the particular redemption, acquisition or cancellation occurred shall, notwithstanding subsections 152(4) to (5) of that Act, be made that is necessary to take into account the application of subsection (13).

(32) Subsections (15) and (17), and subsection 248(17.2) of the Act, as enacted by subsection (18), apply in respect of input tax credits that become eligible to be claimed in taxation years that begin after December 20, 2002.

(33) Subsection (16) and subsections 248(17.1) and (17.3) of the Act, as enacted by subsection (18), apply in respect of input tax refunds and rebates that become eligible to be claimed in taxation years that begin after ANNOUNCEMENT DATE.

(34) Subsection (19) applies after ANNOUNCEMENT DATE.

(35) Subsectino (20) applies in respect of transfers that occur after December 23, 1998.

(36) Subsection (21) applies to units issued after December 20, 2002.

(37) Subsection (22) applies in respect of gifts and monetary contributions made after December 20, 2002, except that

(*a*) subsection 248(31) of the Act, as enacted by subsection (22), is to be read without reference to

(i) its paragraph (*b*) in respect of gifts and monetary contributions made before February 19, 2003, and

(ii) its subparagraph (*a*)(iii) in respect of gifts and monetary contributions made before 6:00 p.m. (EST) on December 5, 2003;

(*b*) subsection 248(34) of the Act, as enacted by subsection (22), does not apply in respect of gifts and monetary contributions made before February 19, 2003;

(*c*) subsections 248(35) to (37) of the Act, as enacted by subsection (22), do not apply in respect of gifts made before 6:00 p.m. (EST) on December 5, 2003; and

(*d*) subsection 248(38) of the Act, as enacted by subsection (22), does not apply in respect of gifts or monetary contributions made before ANNOUNCEMENT DATE.

119. (1) Paragraph 251(1)(*c*) of the Act is replaced by the following:

(*c*) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

(2) Subsection (1) applies after December 23, 1998.

120. (1) Section 253.1 of the Act is replaced by the following:

Investments in limited partnerships

253.1 For the purposes of subparagraph 108(2)(*b*)(ii), paragraphs 130.1(6)(*b*), 131(8)(*b*), 132(6)(*b*), 146.1(2.1)(*c*) and 149(1)(*o*.2), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(*o*.3) and (*o*.4), if a trust or corporation holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

(2) Subsection (1) applies after 1997 except that, for taxation years that end after December 16, 1999 and before 2003, section 253.1 of the Act, as enacted by subsection (1), is to be read as follows:

253.1 For the purposes of subparagraph 108(2)(*b*)(ii), paragraphs 130.1(6)(*b*), 131(8)(*b*), 132(6)(*b*), 146.1(2.1)(*c*) and 149(1)(*o*.2), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(*o*.3) and (*o*.4), if a trust or corporation is a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member is deemed

(*a*) to undertake an investing of its funds because of its acquisition and holding of its interest as a member of the partnership; and

(*b*) not to carry on any business or other activity of the partnership.

121. (1) Subparagraph 256(6)(*b*)(ii) of the French version of the Act is replaced by the following:

(ii) soit à des actions du capital-actions de la société contrôlée qui appartenaient à l'entité dominante au moment donné et qui, selon la convention ou l'arrangement, devaient être rachetées par la société contrôlée ou achetées par la personne ou le groupe de personnes visé au sous-alinéa *a*)(ii).

(2) Subparagraph 256(7)(*a*)(i) of the Act is amended by striking out the word "or" at the end of clause (C) and by adding the following after clause (D):

(E) a corporation on a distribution (within the meaning assigned by subsection 55(1)) by a specified corporation (within the meaning assigned by that subsection) if a dividend, to which subsection 55(2) does not apply because of paragraph 55(3)(*b*), is received in the course of the reorganization in which the distribution occurs.

(3) Paragraph 256(7)(*a*) of the Act is amended by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) the acquisition at any time of shares of the particular corporation if

(A) the acquisition of those shares would otherwise result in the acquisition of control of the particular corporation at that time by a related group of persons, and

(B) each member of each group of persons that controls the particular corporation at that time was related (otherwise than because of a right referred to in paragraph 251(5)(*b*)) to the particular corporation immediately before that time;

(4) Paragraph 256(7)(*e*) of the Act is replaced by the following:

(*e*) control of a particular corporation and of each corporation controlled by it immediately before a particular time is deemed not to have been acquired at the particular time by a corporation (in this paragraph referred to as the "acquiring corporation") if at the particular time, the acquiring corporation acquires shares of the particular corporation's capital stock for consideration that consists solely of shares of the acquiring corporation's capital stock, and if

(i) immediately after the particular time

(A) the acquiring corporation owns all the shares of each class of the particular corporation's capital stock (determined without reference to shares of a specified class, within the meaning assigned by paragraph 88(1)(*c*.8)),

(B) the acquiring corporation is not controlled by any person or group of persons, and

(C) the fair market value of the shares of the particular corporation's capital stock that are owned by the acquiring corporation is not less than 95% of the fair market value of all of the assets of the acquiring corporation, or

(ii) any of clauses (i)(A) to (C) do not apply and the acquisition occurs as part of a plan of arrangement that, upon completion, results in

(A) the acquiring corporation (or a new corporation that is formed on an amalgamation of the acquiring corporation and a subsidiary wholly-owned corporation of the acquiring corporation) owning all the shares of each class of the particular corporation's capital stock (determined without reference to shares of a specified class, within the meaning assigned by paragraph 88(1)(*c*.8)),

(B) the acquiring corporation (or the new corporation) not being controlled by any person or group of persons, and

(C) the fair market value of the shares of the particular corporation's capital stock that are owned by the acquiring corporation (or the new corporation) being not less than 95% of the fair market value of all of the assets of the acquiring corporation (or the new corporation).

(5) Subsections (2) and (3) apply to acquisitions of shares that occur after 2000.

(6) Subsection (4) applies in respect of shares acquired after 1999.

122. (1) The portion of subsection 259(1) of the Act before paragraph (*a*) is replaced by the following:

Proportional holdings in trust property

259. (1) For the purposes of subsections 146(6), (10) and (10.1), 146.1(2.1) and 146.3(7), (8) and (9) and Parts X, X.2, XI and XI.1, if at any time a taxpayer described in section 205 acquires, holds or disposes of a particular unit in a qualified trust and the trust elects for any period that includes that time to have this subsection apply,

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

123. (1) The definition "qualified security" in subsection 260(1) of the Act is amended by striking out the word "or" at the end of paragraph (*c*), by adding the word "or" at the end of paragraph (*d*) and by adding the following after paragraph (*d*):

(*e*) a qualified trust unit;

(2) Paragraph (*a*) of the definition "securities lending arrangement" in subsection 260(1) of the Act is replaced by the following:

(*a*) a person (in this section referred to as the "lender") transfers or lends at any particular time a qualified security to another person (in this section referred to as the "borrower"),

(3) Paragraph (*c*) of the definition "securities lending arrangement" in subsection 260(1) of the Act is replaced by the following:

(*c*) the borrower is obligated to pay to the lender amounts equal to and as compensation for all amounts, if any, paid on the security that would have been received by the borrower if the borrower had held the security throughout the period that begins after the particular time and that ends at the time an identical security is transferred or returned to the lender,

(4) The definition "securities lending arrangement" in subsection 260(1) of the Act is amended by adding the word "and" at the end of paragraph (*d*) and by adding the following after paragraph (*d*):

(*e*) if the lender and the borrower do not deal with each other at arm's length, it is not intended that the arrangement, nor any series of securities lending arrangements, loans or other transactions of which the arrangement is a part, be in effect for more than 270 days,

(5) Subsection 260(1) of the Act is amended by adding the following in alphabetical order:

"qualified trust unit"
« unité de fiducie déterminée »

"qualified trust unit" means a unit of a mutual fund trust that is listed on a prescribed stock exchange;

"security distribution"
« distribution de titre »

"security distribution" means an amount, in respect of a security that is at the time of payment a security borrowed pursuant to a securities lending arrangement, that is paid by the issuer of the security or that is deemed by subsection (5.1) to be an amount received as an amount described in any of paragraphs (5.1)(*a*) to (*c*);

(6) Subsections 260(5) and (6) of the Act are replaced by the following:

Where (5.1) applies

(5) Subsection (5.1) applies to a taxpayer for a taxation year in respect of a particular amount (other than an amount received as proceeds of disposition or an amount received by a person under an arrangement where it may reasonably be considered that one of the main reasons for the person entering into the arrangement was to enable the person to receive a security distribution that would be deductible in computing the taxable income, or not included in computing the income, for any taxation year of the person) received by the taxpayer in the taxation year, as compensation for a payment (referred to in subsection (5.1) as the "underlying payment") paid on a qualified security, if the particular amount is received

(*a*) under a securities lending arrangement,

(i) from a person resident in Canada, or

(ii) from a non-resident person who paid the particular amount in the course of carrying on business in Canada through a permanent establishment as defined by regulation;

(*b*) from a registered securities dealer resident in Canada who paid the particular amount in the ordinary course of a business of trading in securities; or

(*c*) in the ordinary course of the taxpayer's business of trading in securities, where the taxpayer is a registered securities dealer resident in Canada.

Deemed compensation payments

(5.1) If this subsection applies in respect of a particular amount received by a taxpayer in a taxation year as compensation for an underlying payment, the particular amount is deemed, to the extent of the underlying payment, to have been received by the taxpayer in the taxation year as,

(*a*) where the underlying payment is a taxable dividend paid on a share of the capital stock of a public corporation (other than an underlying payment to which paragraph (*b*) applies), a taxable dividend on the share;

(*b*) where the underlying payment is paid by a trust on a qualified trust unit issued by the trust,

(i) an amount of the trust's income that was, to the extent that subsection 104(13) applied to the underlying payment,

(A) paid by the trust to the taxpayer as a beneficiary under the trust, and

(B) designated by the trust in respect of the taxpayer to the extent of a valid designation, if any, by the trust under this Act in respect of the recipient of the underlying payment, and

(ii) to the extent that the underlying payment is a distribution of a property from the trust, a distribution of that property from the trust; or

(*c*) in any other case, interest.

Deductibility

(6) In computing the income of a taxpayer under Part I from a business or property for a taxation year, there may be deducted, in respect of an amount (referred to in this subsection as a "compensation amount") paid by the taxpayer in the year as compensation for a security distribution, an amount equal to

(*a*) if the taxpayer is a registered securities dealer and the security distribution is, or is deemed by subsection (5.1) to have been, received as a taxable dividend, no more than 2/3 of the compensation amount; or

(*b*) if the security distribution is in respect of an amount other than an amount that is, or is deemed by subsection (5.1) to have been, received as a taxable dividend,

(i) where the taxpayer disposes of the borrowed security and includes the gain or loss, if any, from the disposition in the computing its income from a business, the compensation amount, or

(ii) in any other case, the lesser of

(A) the compensation amount, and

(B) the amount, if any, in respect of the security distribution that is included in computing the income, and not deducted in computing the taxable income, for any taxation year of the taxpayer or of any person to whom the taxpayer is related.

(7) Paragraph 260(6.1)(*a*) of the Act is replaced by the following:

(*a*) the total of all amounts each of which is an amount that the corporation becomes obligated in the taxation year to pay to another person under an arrangement described in paragraph (*b*) of the definition "dividend rental arrangement" in subsection 248(1) that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend, and

(8) Subsections 260(7) and (8) of the Act are replaced by the following:

Dividend refund

(7) For the purposes of section 129,

(*a*) any amount paid by a corporation that is not a registered securities dealer (other than an amount for which a deduction in computing income may be claimed under subsection 260(6.1)), and

(*b*) 1/3 of any amount paid by a corporation that is a registered securities dealer (other than an amount for which a deduction in computing income may be claimed under subsection 260(6.1))

that is deemed by subsection 260(5.1) to have been received by another person as a taxable dividend is deemed to have been paid by the corporation as a taxable dividend.

Non-resident witholding tax

(8) For the purpose of Part XIII, any amount paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender

(*a*) as compensation for any security distribution paid in respect of the borrowed security is, except as provided in paragraph (*b*) or (*c*), deemed to be a payment made by the borrower to the lender of interest,

(*b*) as compensation for any security distribution in respect of a borrowed security that is a qualified trust unit, is deemed, to the extent of the amount of the security distribution, to be an amount paid by the trust and having the same character and composition as the security distribution;

(*c*) if the borrowed security is not a qualified trust unit and throughout the term of the securities lending arrangement, the borrower has provided the lender under the arrangement with money in an amount of, or securities described in paragraph (*c*) of the definition "qualified security" in subsection (1) that have a fair market value of, not less than 95% of the fair market value of the borrowed security and the borrower is entitled to enjoy, directly or indirectly, the benefits of all or substantially all income derived from, and opportunity for gain with respect of, the money or securities,

(i) is, to the extent of the amount of the interest or dividend paid in respect of the borrowed security, deemed to be a payment made by the borrower to the lender of interest or a dividend, as the case may be, payable on the borrowed security, and

(ii) is, to the extent of the amount of the interest, if any, paid in respect of the borrowed security, deemed

(A) for the purpose of subparagraph 212(1)(*b*)(vii) to have been payable by the issuer of the borrowed security, and

(B) to have been payable on a security that is a security described in subparagraph 212(1)(*b*)(ii) if the borrowed security is a security described in paragraph (*c*) of the definition "qualified security" in subsection (1); and

(*d*) as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the borrowed security is deemed to be a payment made by the borrower to the lender of interest.

Deemed fee for borrowed security

(8.1) For the purpose of paragraph (8)(*d*), if under a securities lending arrangement the borrower has at any time provided the lender with money, either as collateral or consideration for the security, and the borrower does not, under the arrangement, pay or credit a reasonable amount to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security, the borrower is deemed to have, at the time that an identical security is or can reasonably be expected to be transferred or returned to the lender, paid to the lender under the arrangement an amount as a fee for the use of the security equal to the amount, if any, by which (*a*) interest on the money computed at the prescribed rates in effect during the term of the arrangement,

exceeds

(*b*) the amount, if any, by which any amount that the lender pays or credits to the borrower under the arrangement exceeds the amount of the money.

Effect for tax treaties

(8.2) In applying subsection (8) any amount, paid or credited under a securities lending arrangement by or on behalf of the borrower to the lender, that is deemed by paragraph (8)(*a*), (*b*) or (*d*) to be a payment of interest, is deemed for the purposes of any tax treaty not to be payable on or in respect of the security.

(9) Subsection 260 of the Act is amended by adding the following after subsection (9):

Partnerships

(10) For the purpose of this section,

(*a*) a person includes a partnership; and

(*b*) a partnership is deemed to be a registered securities dealer if each member of the partnership is a registered securities dealer.

Corporate members of partnerships

(11) A corporation that is, in a taxation year, a member of a partnership is deemed,

(*a*) for the purpose of applying subsection (5) in respect of the taxation year,

(i) to receive its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount received by the partnership in that fiscal period, and

(ii) in respect of the receipt of its specified proportion of that amount, to be the same person as the partnership;

(*b*) for the purpose of applying paragraph (6.1)(*a*) in respect of the taxation year, to become obligated to pay its specified proportion, for each fiscal period of the partnership that ends in the taxation year, of the amount the partnership becomes, in that fiscal period, obligated to pay to another person under the arrangement described in that paragraph; and

(*c*) for the purpose of applying section 129 in respect of the taxation year, to have paid

(i) if the partnership is not a registered securities dealer, the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) by the corporation), and

(ii) if the partnership is a registered securities dealer, 1/3 of the corporation's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount paid by the partnership (other than an amount for which a deduction in computing income may be claimed under subsection (6.1) by the corporation).

Individual members of partnerships

(12) An individual that is, in a taxation year, a member of a partnership is deemed,

(*a*) for the purpose of applying subsection (5) in respect of the taxation year,

(i) to receive the individual's specified proportion, for each fiscal period of the partnership that ends in the taxation year, of each amount received by the partnership in that fiscal period, and

(ii) in respect of the receipt of the individual's specified proportion of that amount, to be the same person as the partnership; and

(*b*) for the purpose of clause 82(1)(*a*)(ii)(B),to have paid the individual's specified proportion, for each fiscal period of the partnership that ends in the year, of each amount paid by the partnership in that fiscal period that is deemed by subsection (5.1) to have been received by another person as a taxable dividend.

(10) Subsections (1), (3), (5), (6) and (8) apply to arrangements made after 2001.

(11) Subsections (2) and (4) apply to arrangements made after 2002.

(12) Subsection (7) applies to

(*a*) arrangements made after December 20, 2002;

(*b*) an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement have made the election referred to in paragraph 118(24)(*b*), except that, in its application to an arrangement made before 2002, the reference to the expression "subsection 260(5.1)" in paragraph 260(6.1)(*a*) of the Act, as enacted by subsection (7), is to be read as a reference to the expression "subsection 260(5)"; and

(*c*) an arrangement, other than an arrangement to which paragraph (*b*) applies, made after 2001 and before December 21, 2002, except that, in its application before December 21, 2002, paragraph 260(6.1)(*a*) of the Act, as enacted by subsection (7), is to be read as follows:

"(*a*) the amount that the corporation is obligated to pay to another person under an arrangment described in paragraphs (*c*) and (*d*) of the definition "dividend rental arrangement" in subsection 248(1) that, if paid, would be deemed by subsection (5.1) to have been received by another person as a taxable dividend,".

(13) Subsection (9) applies to

(*a*) arrangements made after December 20, 2002; and

(*b*) an arrangement made after November 2, 1998 and before December 21, 2002 if the parties to the arrangement have made the election referred to in paragraph 118(24)(*b*), except that, in its application to an arrangement made before 2002, the reference to the expression "subsection 260(5.1)" in paragraph 260(12)(*b*) of the Act, as enacted by subsection (9), is to be read as a reference to the expression "subsection 260(5)".

124. (1) The Act is amended by adding the following after section 260:

SCHEDULE

(Subsection 181(1))

Listed Corporations

2419726 Canada Inc.

AmeriCredit Financial Services of Canada Ltd.

AVCO Financial Services Quebec Limited

Bombardier Capital Ltd.

Canaccord Capital Credit Corporation/Corporation de crédit Canaccord capital

Canadian Cooperative Agricultural Financial Services

Canadian Home Income Plan Corporation

Citibank Canada Investment Funds Limited.

Citicapital Commercial Corporation/Citicapital Corporation Commerciale

Citi Cards Canada Inc./Cartes Citi Canada Inc.

Citi Commerce Solutions of Canada Ltd.

CitiFinancial Canada East Corporation/CitiFinancière, corporation du Canada est

CitiFinancial Canada, Inc./CitiFinancière Canada, Inc.

CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires

CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothécaires de l'Est

Citigroup Finance Canada Inc.

Crédit Industriel Desjardins

CU Credit Inc.

Ford Credit Canada Limited

GE Card Services Canada Inc./GE Services de Cartes du Canada Inc.

General Motors Acceptance Corporation of Canada Limited

GMAC Residential Funding of Canada, Limited

Household Commercial Canada Inc.

Household Finance Corporation of Canada

Household Finance Corporation Limited

Household Realty Corporation Limited

Hudson's Bay Company Acceptance Limited

John Deere Credit Inc./Crédit John Deere Inc.

Merchant Retail Services Limited

PACCAR Financial Ltd./Compagnie Financière Paccar Ltée

Paradigm Fund Inc./Le Fonds Paradigm Inc.

Prêts étudiants Atlantique Inc./Atlantic Student Loans Inc.

Principal Fund Incorporated

RT Mortgage-Backed Securities II Limited

RT Mortgage-Backed Securities Limited

State Farm Finance Corporation of Canada/Corporation de Crédit State Farm du Canada

Trans Canada Credit Corporation

Trans Canada Retail Services Company/Société de services de détails trans Canada

Wells Fargo Financial Canada Corporation

(2) Subject to subsection (3), subsection (1) is deemed to have come into force on December 20, 2002.

(3) Subsection (1) is deemed to have come into force to enact the schedule referred to in that subsection so as to, as of the dates set out below, list each of the following corporations in the schedule:

(*a*) 2419726 Canada Inc., January 1, 1998 except that, in its application

(i) after May 1999 and before April 2002, the reference in the schedule to that corporation is to be read as a reference to "CitiFinancial Canada, Inc./CitiFinancière Canada, Inc.", and

(ii) after 1997 and before June 1999, the reference in the schedule to that corporation is to be read as a reference to "Commercial Credit Corporation CCC Limited/Corporation De Credit Commerciale CCC Limitee

(*b*) AmeriCredit Financial Services of Canada Ltd., June 30, 2001;

(*c*) Canaccord Capital Credit Corporation/Corporation de crédit Canaccord capital, September 25, 2000;

(*d*) Citibank Canada Investment Funds Limited, December 31, 2001;

(*e*) Citicapital Commercial Corporation/Citicapital Corporation Commerciale, January 1, 2000 except that, in its application after 1999 and before July 2001, the reference in the schedule to that corporation is to be read as a reference to "Associates Commercial Corporation of Canada Ltd./Les Associés, Corporation Commerciale du Canada Ltee";

(*f*) Citi Cards Canada Inc./Cartes Citi Canada Inc., September 25, 2003;

(*g*) Citi Commerce Solutions of Canada Ltd., January 1, 2003;

(*h*) CitiFinancial Services of Canada East Company/CitiFinancière, compagnie de services du Canada Est, December 23, 1997 except that, in its application

(i) after April 2001 and before April 2002, the reference in the schedule to that corporation is to be read as a reference to "CitiFinancial Services of Canada East

Company/CitiFinancière, compagnie de services du Canada Est",

(ii) after September 26, 1999 and before May 2001, the reference in the schedule to that corporation is to be read as a reference to "Associates Financial Services of Canada East Company/Les Associés, Compagnie de Services Financiers du Canada Est",

(iii) after February 12, 1998 and before September 27, 1999, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Canada East Company/Compagnie Services Financiers Avco Canada Est",

(iv) after December 29, 1997 and before February 13, 1998, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Canada East Company/Services Financiers Avco Canada Est Compagnie", and

(v) after December 22, 1997 and before December 30, 1997, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Canada East Company";

(*i*) CitiFinancial Canada, Inc./CitiFinancière Canada, Inc., March 2, 1998 except that, in its application

(i) after April 2001 and before April 2002, the reference in the schedule to that corporation is to be read as a reference to "CitiFinancial Services of Canada, Ltd./CitiFinancière, services du Canada, Ltée", and

(ii) after March 1, 1998 and before May 2001, the reference in the schedule to that corporation is to be read as "Associates Financial Services of Canada Ltd./Les Associés, Services Financières du Canada Ltée";

(*j*) CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires, March 2, 1998, except that, in its application after March 1, 1998 and before May 2001, the reference in the schedule to that corporation is to be read as "Associates Mortgage Corporation/Les Associés, Corporation de Prêts Hypothécaires";

(*k*) CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothécaires de l'Est, December 23, 1997, except that, in its application

(i) after November 2, 1999 and before May 2001, the reference in the schedule to that corporation is to be read as a reference to "Associates Mortgage East Corporation/Les Associés, Corporation de Prêts Hypothécaires de l'Est",

(ii) after September 27, 1999 and before November 3, 1999, the reference in the schedule to that corporation is to be read as a reference to "Associates Mortgage East Corporation/Les Associés, Corporation de Financiers du Prêts Hypothécaires de l'Est",

(iii) after February 12, 1998 and before September 28, 1999, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Realty East Company/Compagnie Services Financiers Immobiliers Avco Est",

(iv) after December 29, 1997 and before February 13, 1998, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Realty East Company/Services Financiers Immobiliers Avco Est Compagnie", and

(v) after December 22, 1997 and before December 30, 1997, the reference in the schedule to that corporation is to be read as a reference to "Avco Financial Services Realty East Company";

(*l*) Citigroup Finance Canada Inc., January 1, 1998, except that, in its application after 1997 and before June 11, 2003, the reference in the schedule to that corporation is to be read as "Associates Capital Corporation of Canada/Corporation de capital associés du Canada";

(*m*) Ford Credit Canada Limited, December 23, 1997;

(*n*) GE Card Services Canada Inc./GE Services de Cartes du Canada Inc., August 2, 2000;

(*o*) GMAC Residential Funding of Canada, Limited, January 1, 2003;

(*p*) John Deere Credit Inc./Crédit John Deere Inc., January 1, 1999;

(*q*) PACCAR Financial Ltd./Compagnie Financière Paccar Ltée, January 1, 2003;

(*r*) Paradigm Fund Inc./Le Fonds Paradigm Inc., January 1, 2002;

(*s*) Prêts étudiants Atlantique Inc./Atlantic Student Loans Inc., January 1, 1998 except that, in its application after 1997 and before June 13, 2002, the reference in the schedule to that corporation is to be read as "Prêts étudiants Acadie Inc./Acadia Student Loans Inc.";

(*t*) State Farm Finance Corporation of Canada/ Corporation de Crédit State Farm du Canada., January 1, 2002 except that, in its application after 2001 and before May 2002, the reference in the schedule to that corporation is to be read as "VNB Financial Services Inc./Services financiers VNB, Inc."

(*u*) Trans Canada Retail Services Company/Société de services de détails trans Canada, January 1, 1999 except that, in its application after 1998 and before January 15, 2002, the reference in the schedule to that corporation is to be read as "National Retail Credit Services Company/Société de services de credit aux détaillants national"; and

(*v*) Wells Fargo Financial Canada Corporation, January 1, 1999, except that, in its application after 1998 and before September 7, 2001, the reference in the schedule to that corporation is to be read as a reference to "Norwest Financial Canada Company".

(4) Ford Credit Canada Limited is deemed to have been, from July 1, 1989 to December 22, 1997, prescribed by a regulation made under paragraph 181(1)(*g*) of the Act.

(5) The schedule enacted by subsection (1) is amended by removing from the list, as of the dates set out below, the following corporations:

(*a*) GE Card Services Canada Inc./ GE Services Cartes du Canada Inc., January 1, 2003;

(*b*) 2419726 Canada Inc., March 31, 2002;

(*c*) CitiFinancial Mortgage Corporation/CitiFinancière, corporation de prêts hypothécaires, March 31, 2002; and

(*d*) CitiFinancial Mortgage East Corporation/CitiFinancière, corporation de prêts hypothocaires de l'Est, April 1, 2002.

Federal-Provincial Fiscal Arrangements Act

125. (1) Paragraph 12.2(1)(*b*) of the *Federal-Provincial Fiscal Arrangements Act* is replaced by the following:

(*b*) the Act of the legislature of the province imposing a tax on the income of corporations provides, in the opinion of the Minister, for a deduction in computing taxable income of a corporation for taxation years ending in the fiscal year of an amount that is not less than the amount deductible by the corporation for the year under paragraph 110(1)(*k*) of the *Income Tax Act*.

(2) Subsection (1) applies after 2003.

Income Tax Amendments Act, 2000

126. (1) Subsection 59(2) of the *Income Tax Amendments Act, 2000* is replaced by the following:

(2) Subsection (1) applies to taxation years that end after February 27, 2000 except that, for a taxation year of a debtor that includes either February 28, 2000 or October 17, 2000 or began after February 28, 2000 and ended before October 17, 2000, the reference to the fraction "1/2" in subsection 80.01(10) of the Act, as enacted by subsection (1), shall be read as a reference to the fraction in paragraph 38(*a*) of the Act that applied to the debtor for the year in which the commercial debt obligation was deemed to have been settled.

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

127. (1) Subsection 70(11) of the Act is replaced by the following:

(11) Subsections (4), (5) and (7) apply to taxation years that end after February 27, 2000 except that, for a taxation year of a taxpayer that includes February 28, 2000 or October 17, 2000, or began after February 28, 2000 and ended before October 17, 2000, the references to the word "twice" in subsection 93(1.2) of the Act, as enacted by subsection (4), in subsection 93(2) of the Act, as

enacted by subsection (5), and in subsection 93(2.2) of the Act, as enacted by subsection (7), shall be read as references to the expression "the fraction that is the reciprocal of the fraction in paragraph 38(*a*) of the Act, as enacted by subsection 22(1) of the *Income Tax Amendments Act, 2000*, that applies to the taxpayer for the year, multiplied by".

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

PART 2

FOREIGN AFFILIATES

INCOME TAX ACT

128. (1) Section 17 of the Act is amended by adding the following after subsection (8):

Borrowed money

(8.1) Subsection (8.2) applies in respect of money (referred to in this subsection and in subsection (8.2) as "new borrowings") that a controlled foreign affiliate of a particular corporation resident in Canada has borrowed from the particular corporation where the affiliate has used the new borrowings

(*a*) to repay money (referred to in this subsection and in subsection (8.2) as "previous borrowings") previously borrowed from any person or partnership, if

(i) the previous borrowings became owing after the last time that the affiliate became a controlled foreign affiliate of the particular corporation, and

(ii) the previous borrowings have, at all times after they became owing, been used for a purpose described in subparagraph (8)(*a*)(i) or (ii); or

(*b*) to pay an amount owing (referred to in this subsection and in subsection (8.2) as the "unpaid purchase price") by the affiliate for property previously acquired from any person or partnership, if

(i) the property was acquired, and the unpaid purchase price became owing, by the affiliate after the last time that it became a controlled foreign affiliate of the particular corporation,

(ii) the unpaid purchase price is in respect of the property, and

(iii) throughout the period that began when the unpaid purchase price became owing by the affiliate and ended when the unpaid purchase price was so paid, the property had been used principally to earn income described in clause (8)(*a*)(i)(A) or (B).

Deemed use

(8.2) If this subsection applies in respect of new borrowings, the new borrowings are, for the purpose of subsection (8), deemed to have been used for the purpose for which the proceeds from the previous borrowings were used or were deemed by this subsection to have been used, or to acquire the property in respect of which the unpaid purchase price was payable, as the case may be

(2) The definition "controlled foreign affiliate" in subsection 17(15) of the Act is replaced by the following:

"controlled foreign affiliate"
« société étrangère affiliée contrôlée »

"controlled foreign affiliate", at any time, of a taxpayer resident in Canada, means a corporation that would, at that time, be a controlled foreign affiliate of the taxpayer within the meaning assigned by the definition "controlled foreign affiliate" in subsection 95(1) if

(*a*) that definition were read without reference to its paragraph (*a*);

(*b*) subparagraph (*c*)(ii) of that definition read as follows:

"(ii) each person resident in Canada that does not deal at arm's length with the taxpayer,"; and

(*c*) subparagraph (*c*)(iv) of that definition read as follows:

"(iv) each person resident in Canada that does not deal at arm's length with a person resident in Canada described in subparagraph (iii);".

(2) Subsection (1) applies to taxation years that begin after February 23, 1998.

(3) Subsection (2) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after February 23, 1998, except that in applying the definition "controlled foreign affiliate", in subsection 17(15) of the Act, as enacted by subsection (2),

(*a*) for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before ANNOUNCEMENT DATE, that definition is to be read as follows:

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if

(*a*) that definition were read without reference to its paragraph (*a*); and

(*b*) subparagraph (*c*)(iii) of that definition read as follows:

"(iii) the taxpayer and each person resident in Canada with whom the taxpayer does not deal at arm's length;"; **and**

(*b*) for taxation years, of a foreign affiliate of a taxpayer, that begin after February 23, 1998 and before 2003, that definition is to be read as follows:

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if subparagraph (*b*)(iii) of that definition read as follows:

(iii) the taxpayer and each person resident in Canada with whom the taxpayer does not deal at arm's length;".

129. (1) Section 42 of the Act is replaced by the following:

Consideration for warranties, covenants or other obligations

42. For the purposes of this subdivision

(*a*) an amount received or receivable by a taxpayer in a taxation year as consideration for a warranty, a covenant or another conditional or contingent obligation given or incurred by the taxpayer in respect of a property disposed of, at any time, by the taxpayer

(i) is, if the amount is received or becomes receivable on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the taxpayer disposed of the property, to be included in computing the taxpayer's proceeds of disposition of the property, and

(ii) is, if the amount is received or becomes receivable after that filing-due date, deemed to be a capital gain of the taxpayer from the disposition, by the taxpayer of the property, that occurs at the time when the amount is received or becomes receivable; and (*b*) an outlay or expense paid or payable by the taxpayer in a taxation year under a warranty, covenant or another conditional or contingent obligation given or incurred by the taxpayer in respect of property disposed of, at any time, by the taxpayer

(i) is, if the amount is paid or becomes payable on or before the taxpayer's filing-due date for the taxpayer's taxation year in which the taxpayer disposed of the property, to be deducted in computing the taxpayer's proceeds of disposition of the property, and

(ii) is, if the amount is paid or becomes payable after that filing-due date, deemed to be a capital loss of the taxpayer from the disposition, by the taxpayer of the property, that occurs at the time when the amount is paid or becomes payable.

(2) Subsection (1) applies to taxation years that end after ANNOUNCEMENT DATE.

130. (1) Subsection 88(1) of the Act is amended by adding the following after paragraph (*d*.3):

(*d*.4) for the purpose of subparagraph (*d*)(ii),

(i) if, at the time immediately before the winding-up, the subsidiary holds one or more shares of a foreign affiliate of the subsidiary, there shall be added to the cost amount, at that time, of each of those shares (referred to in this subparagraph as the "particular share") the amount determined by the formula

$$A \times B/C$$

where

A is the total of all amounts each of which is the amount, if any, by which

(A) the amount of a dividend received on any share of the foreign affiliate (or any other share of the foreign affiliate for which that share is substituted property) held by the subsidiary immediately before the winding-up, that was deductible under section 113 in computing the income of the subsidiary or of a corporation with which the subsidiary was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) in respect of the foreign affiliate),

exceeds

(B) the portion of that dividend that may reasonably be considered to have reduced the foreign affiliate's exempt or taxable surplus in respect of the subsidiary that arose after the acquisition of control of the subsidiary by the parent (determined on the assumption that a dividend is paid out of the foreign affiliate's exempt or taxable surplus, as the case may be, in respect of the subsidiary, in the reverse order to that in which it was added to the foreign affiliate's exempt or taxable surplus in respect of the subsidiary),

B is the fair market value of the particular share immediately before the winding-up, and

C is the total of all amounts each of which is the fair market value of a share of the foreign affiliate held by the subsidiary immediately before the winding-up, and

(ii) if, at the time immediately before the winding-up, the subsidiary holds a partnership interest in a partnership (referred to in this subparagraph as a "holding partnership") which holds one or more shares of a foreign affiliate of the subsidiary, there shall be added to the cost amount, at that time, of the subsidiary's partnership interest in the holding partnership (referred to in this subparagraph as the "particular partnership interest"), the amount determined by the formula

$$D \times E/F$$

where

D is the total of all amounts each of which is the amount, if any, by which

(A) the amount of a dividend received on any share of the foreign affiliate (or any other share of the foreign affiliate for which that share is substituted property) held by the holding partnership immediately before the winding-up, that was deductible under section 113 in computing the income of the subsidiary or of a corporation with which the subsidiary was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) in respect of the foreign affiliate),

exceeds

(B) the portion of that dividend that may reasonably be considered to have reduced the foreign affiliate's exempt or taxable surplus in respect of the subsidiary that arose after the acquisition of control of the subsidiary by the parent (determined on the assumption that a dividend is paid out of the foreign affiliate's exempt or taxable surplus, as the case may be, in respect of the subsidiary, in the reverse order to that in which it was added to the foreign affiliate's exempt or taxable surplus in respect of the subsidiary),

E is the fair market value of the particular partnership interest immediately before the winding-up, and

F is the total of all amounts each of which is the fair market value of a partnership interest in the holding partnership held by the subsidiary immediately before the winding-up;

(2) Subsection 88(3) of the Act is replaced by the following:

Distributions of property of a foreign affiliate

(3) If, at any time, a taxpayer resident in Canada receives a property from a foreign affiliate of the taxpayer (the property received and the foreign affiliate from which the property was received being referred to in this subsection as the "distributed property" and the "disposing foreign affiliate", respectively), on a dissolution and a liquidation of the disposing foreign affiliate, on a redemption of shares of the capital stock of the disposing foreign affiliate, as a payment of a dividend by the disposing foreign affiliate, or as a distribution of property by the disposing foreign affiliate,

(*a*) where the distributed property was, immediately before that time, a share of the capital stock of another foreign affiliate of the taxpayer and an excluded property of the disposing foreign affiliate, the distributed property

(i) is deemed to have been disposed of, at that time, by the disposing foreign affiliate to the taxpayer for proceeds of disposition that are equal to

(A) unless a valid election is made under clause (B), the adjusted cost base to the disposing foreign affiliate of the distributed property, immediately before that time, and

(B) the amount that the taxpayer elects in the prescribed manner and in the prescribed time in respect of the distributed property, which amount may not be less than the adjusted cost base to the disposing foreign affiliate of the distributed property immediately before that time and may not exceed the fair market value, at that time, of the distributed property, and

(ii) is deemed to have been acquired, at that time, by the taxpayer at a cost equal to the amount, determined under subparagraph (i), to be the disposing foreign affiliate's proceeds of disposition of the distributed property;

(*b*) where the distributed property is property to which paragraph (*a*) does not apply, the distributed property is deemed

(i) to have been disposed of, at that time, by the disposing foreign affiliate to the taxpayer for proceeds of disposition that are equal to the fair market value, at that time, of the distributed property, and

(ii) to have been acquired, at that time, by the taxpayer at a cost equal to the amount, determined under subparagraph (i), to be the disposing foreign affiliate's proceeds of disposition of the distributed property;

(*c*) where the taxpayer disposed of shares of the capital stock of the disposing foreign affiliate on the dissolution and liquidation of the disposing foreign affiliate or on the redemption, acquisition or cancellation of shares of the disposing foreign affiliate, as the case may be, the taxpayer's proceeds of disposition of the shares are deemed to be the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the cost to the taxpayer of a distributed property received by the taxpayer as consideration for the disposition of the shares, and

B is the total of all amounts each of which is the amount of a debt owing by the disposing foreign affiliate, or of an obligation of the disposing foreign affiliate to pay an amount, (other than a dividend payable to the taxpayer or to persons with whom the taxpayer does not deal at arm's length) that was assumed or cancelled by the taxpayer because of the dissolution and liquidation or because of the redemption, acquisition or cancellation;

(*d*) where the taxpayer received distributed property as a dividend or a distribution of property, the amount of the dividend paid by the disposing foreign affiliate or the amount of the distribution of property made by the disposing foreign affiliate to the taxpayer, as case may be, is deemed to be the amount determined by the formula

$$D - E$$

where

D is the total of all amounts each of which is the cost to the taxpayer of a distributed property received by the taxpayer from the disposing foreign affiliate as the payment of a dividend or as the distribution of property, as the case may be, and

E is the total of all amounts each of which is the amount of a debt owing by the disposing foreign affiliate or of an obligation of the disposing foreign affiliate to pay an amount (other than a dividend payable to the taxpayer or to persons with whom the taxpayer does not deal at arm's length) that was assumed or cancelled by the taxpayer because of the payment of the dividend or because of the distribution;

(*e*) the amount of a distribution of property made, at that time, by the disposing foreign affiliate to the taxpayer, is to be deducted in computing the taxpayer's adjusted cost base of a particular share of the capital stock of disposing foreign affiliate held by the taxpayer, at that time, to the extent that it is reasonable to consider the distribution to be a payment made by the disposing foreign affiliate to the taxpayer as

(i) a return of an amount that was received by the disposing foreign affiliate as consideration for the issuance of the particular share, or

(ii) a return of an amount of contributed surplus that was received by the disposing foreign affiliate before that time, as a contribution of capital to the disposing foreign affiliate by the shareholder that held the particular share at the time of the contribution; and

(*f*) the amount of a distribution of property made, at that time, by the disposing foreign affiliate to the taxpayer is to be included in computing the taxpayer's income as income from property that is the shares of the capital stock of the disposing foreign affiliate held at that time by the taxpayer, to the extent that it is not deducted, under paragraph (*e*), in computing the adjusted cost base of a particular share of the capital stock of the disposing foreign affiliate held by the taxpayer.

(3) Subsection (1) applies to amalgamations that occur, and to windings-up that begin, after ANNOUNCEMENT DATE and if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, that subsection applies in respect of the taxpayer to all amalgamations that occur, and to all windings-up that begin, after December 20, 2002 and, notwithstanding subsections 152(4) to (5) of the Act, any assessment of the taxpayer's tax, interest and penalties payable under the Act for any taxation year that begins on or before ANNOUNCEMENT DATE shall be made that is necessary to take the election into account.

(4) Subsection (2) applies to property received after ANNOUNCEMENT DATE.

131. (1) Section 92 of the Act is amended by adding the following after subsection (1):

Where subsection (1.3) applies

(1.1) Subsection (1.3) applies to a holder of a share (referred to in this subsection and subsections (1.2) and (1.3) as the "relevant share") of a foreign affiliate (referred to in this subsection and subsection (1.2) as the "relevant foreign affiliate") of a particular corporation resident in Canada in computing at any time (referred to in this subsection and subsections (1.2) and (1.3) as the "computation time") the adjusted cost base to the holder of the relevant share, if, at the computation time, there is a specified section 93 election related to the relevant share.

Specified section 93 election

(1.2) An election made by the particular corporation resident in Canada under subsection 93(1) or (1.2), as the case may be, in respect of a share of a particular foreign affiliate of the particular corporation that is disposed of at a time (referred to in this subsection as the "election time") before the computation time is, at the computation time, a specified section 93 election related to the relevant share if

(*a*) the particular foreign affiliate has, at the election time, an equity percentage in the relevant foreign affiliate;

(*b*) the relevant foreign affiliate was, at the election time, a foreign affiliate of the particular corporation;

(*c*) throughout the period that begins at the election time and ends at the computation time,

(i) the holder held the relevant share, and

(ii) the holder was

(A) a foreign affiliate of the particular corporation,

(B) a foreign affiliate of a corporation resident in Canada that was related to the particular corporation,

(C) a partnership of which a foreign affiliate of the particular corporation was a member, or

(D) a partnership of which a foreign affiliate, of a corporation resident in Canada that was related to the particular corporation, was a member;

(*d*) the relevant share was, at the election time, excluded property of the holder (or would have been, at the election time, excluded property of the holder if the holder had been a foreign affiliate of the particular corporation); and

(*e*) the relevant share is, at the computation time, excluded property of the holder (or would have been, at the computation time, excluded property of the holder if the holder had been a foreign affiliate of the particular corporation or of a corporation resident in Canada that is related to the particular corporation).

Adjustments to adjusted cost base

(1.3) If this subsection applies, the following rules apply in determining the adjusted cost base to the holder of the relevant share for the purposes described in subsection (1.4):

(*a*) there shall be added, to the adjusted cost base to the holder of the relevant share, the amount prescribed in respect of the relevant share in respect of the specified section 93 election, and

(*b*) there shall be deducted, from the adjusted cost base to the holder of the relevant share, the amount prescribed in respect of the relevant share in respect of the specified section 93 election.

Applicability of subsection (1.3)

(1.4) The purposes described in this subsection are

(*a*) the computation, at any time after the election time, of the exempt surplus or deficit, the taxable surplus or deficit, and the underlying foreign tax, of the holder, in respect of the particular corporation resident in Canada or in respect of any other person that would, at the time after the election time, and if the taxpayer referred to in subparagraphs 95(2)(*f*)(iv) to (vii) were the particular corporation, be described by any of those subparagraphs; and

(*b*) the application, at any time after the election time, of paragraphs 95(2)(*c*.1) to (*e*.6).

(2) Subsection (1) applies in respect of elections made under subsection 93(1) or (1.2) of the Act in respect of dispositions that occur after December 20, 2002, except that subsection (1) does not apply in respect of an election made under subsection 93(1) or (1.2) of the Act in respect of a disposition by a vendor of a share

(*a*) that is required to be made under an agreement in writing made by the vendor on or before December 20, 2002;

(*b*) that occurs on or before ANNOUNCEMENT DATE, if a valid election in respect of the vendor was made under subsection 133(40) or if none of paragraphs 88(3)(*a*), 95(2)(*c*.2) and 95(2)(*d*) to (*e*.5) of the Act applies to the disposition; or

(*c*) that occurs after ANNOUNCEMENT DATE if that disposition is required to be made under an agreement in writing made by the vendor on or before ANNOUNCEMENT DATE and if none of paragraphs 88(3)(*a*), 95(2)(*c*.2) and 95(2)(*d*) to (*e*.5) of the Act applies to the disposition.

132. (1) Paragraph 93(1)(*a*) of the Act is replaced by the following:

(*a*) the amount (which may not exceed the lesser of the proceeds of disposition of the share and the amount prescribed in respect of the share) designated by the corporation in its election (referred to in this subsection as the "elected amount") is deemed

(i) to have been a dividend received on the share from the affiliate by the disposing corporation or the disposing affiliate, as the case may be, immediately before the disposition, and

(ii) not to have been received as proceeds of disposition; and

(2) Subsection 93(1.1) of the Act is replaced by the following:

Deemed election

(1.1) If at any time shares of the capital stock of a foreign affiliate of a corporation resident in Canada are disposed of by another foreign affiliate of the corporation, the corporation is deemed

(*a*) to have made an election at that time under subsection (1) in respect of each of those shares; and

(*b*) to have designated, in the election, the amount prescribed in respect of each of those shares.

(3) The portion of subsection 93(1.2) of the Act before paragraph (*a*) is replaced by the following:

Disposition of shares of a foreign affiliate held by a partnership

(1.2) If a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to in this subsection as the "disposing corporation") would, but for this subsection, have a taxable capital gain from a disposition by a partnership, at any time, of shares of a class of the capital stock of a foreign affiliate of the particular corporation and the particular corporation so elects in prescribed manner and within the prescribed time in respect of the disposition,

(4) Subparagraph 93(1.2)(*a*)(i) of the Act is replaced by the following:

(i) the amount that the particular corporation designates that may not exceed the lesser of

(A) the amount determined by the formula

$$K \times L/M$$

where

K is the taxable capital gain of the partnership, L is the number of shares of that class of the capital stock of the foreign affiliate, determined as the amount, if any, by which the number of those shares that were deemed to have been owned by the disposing corporation for the purposes of subsection 93.1(1) immediately before the disposition exceeds the number of those shares that were deemed to have been owned for those purposes by the disposing corporation immediately after the disposition, and

M is the number of those shares of the foreign affiliate that were owned by the partnership immediately before the disposition, and

(B) the amount prescribed in respect of the share, or

(5) Section 93 of the Act is amended by adding the following after subsection (1.3):

No election

(1.4) Notwithstanding subsections (1) to (1.3), no election may be made under subsection (1) or (1.2) by a corporation in respect of a disposition of a share of the capital stock of a foreign affiliate of the corporation if any of paragraph 88(3)(*a*) and subparagraphs 95(2)(*d*)(i), (*d*.1)(i), (*e*)(i), (*e*.1)(i), (*e*.2)(i), (*e*.3)(i), (*e*.4)(i) and (*e*.5)(i) applies to the disposition.

(6) The formula in subsection 93(2) of the Act is replaced by the following:

$$A - (B - C) + D$$

(7) Subsection 93(2) of the Act is amended by deleting the word "and" at the end of the description of B, by adding the word "and" at the end of the description of C and by adding the following after the description of C:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain determined under paragraph 39(2)(*a*) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of a corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, and

(ii) the amount of any gain realized by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

(8) The formula in subsection 93(2.1) of the Act is replaced by the following:

$$A - (B - C) \underline{+ D}$$

(9) Subsection 93(2.1) of the Act is amended by deleting the word "and" at the end of the description of B, by adding the word "and" at the end of the description of C, and by adding the following after the description of C:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) one-half of the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(*a*) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the partnership, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the partnership, and

(ii) the amount of any gain realized by the partnership (to the extent that the gain is reasonably attributable to the corporation resident in Canada or to the foreign affiliate of the corporation resident in Canada, as the case may be), by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the partnership, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

(10) The formula in subsection 93(2.2) of the Act is replaced by the following:

$$A - (B - C) \underline{+ D}$$

(11) Subsection 93(2.2) of the Act is amended by deleting the word "and" at the end of the description of B, by adding the word vandb at the end of the description of C, and by adding the following after the description of C:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(*a*) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the corporation resident in Canada or of the foreign affiliate resident in Canada, as the case may be, or of an interest in the partnership that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the corporation resident in Canada, by the foreign affiliate of the corporation resident in Canada, or by the partnership, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

(12) The formula in subsection 93(2.3) of the Act is replaced by the following:

$$A - (B - C) \underline{+ D}$$

(13) Subsection 93(2.3) of the Act is amended by deleting the word "and" at the end of the description of B, by adding the word "and" at the end of the description of C, and by adding the following after the description of C:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) one-half of the total of the following amounts determined in respect of the corporation resident in Canada or the foreign affiliate of the corporation resident in Canada, as the case may be,

(i) the amount of the capital gain of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, or of the partnership (to the extent that such a gain is reasonably attributable to the corporation resident in Canada, or to the foreign affiliate of the corporation resident in Canada, as the case may be) determined under paragraph 39(2)(*a*) for the taxation year that includes that time in respect of

(A) the settlement or extinguishment of an obligation of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada, of the partnership or of the other partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the corporation resident in Canada or of the foreign affiliate of the corporation resident in Canada, as the case may be, or of an interest in the partnership or in the other partnership, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by a partnership (to the extent that such gain is reasonably attributable to the corporation resident in Canada or to the foreign affiliate of the corporation resident in Canada, as the case may be), by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the partnership, by the corporation resident in Canada or by the foreign affiliate of the corporation resident in Canada, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

(14) Subsections (1), (2) and (4) apply to dispositions that occur after December 20, 2002, except that those subsections do not apply to a disposition by a vendor of a share

(*a*) that is required to be made under an agreement in writing made by the vendor on or before December 20, 2002;

(*b*) that occurs on or before ANNOUNCEMENT DATE, if a valid election in respect of the vendor was made under subsection 133(40) or if none of paragraphs 88(3)(*a*), 95(2)(*c*.2) and 95(2)(*d*) to (*e*.5) of the Act applies to the disposition; or

(*c*) that occurs after ANNOUNCEMENT DATE if that disposition is required to be made under an agreement in writing made by the vendor on or before ANNOUNCEMENT DATE and if none of paragraphs 88(3)(*a*), 95(2)(*c*.2) and 95(2)(*d*) to (*e*.5) of the Act applies to the disposition.

(15) Subsection (3) applies to dispositions that occur after November 1999.

(16) Subsection (5) applies to dispositions that occur after ANNOUNCEMENT DATE.

(17) Subsections (6) to (13) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after ANNOUNCEMENT DATE, except that if the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, those subsections apply to taxation years of the taxpayer and of all the taxpayer's foreign affiliates that begin after 1994, and, notwithstanding subsections 152(4) to (5) of the Act, any assessment of the taxpayer's tax, interest and penalties payable under the Act for any of those taxation years that begin on or before ANNOUNCEMENT DATE shall be made that is necessary to take the election into account.

133. (1) The definition "controlled foreign affiliate" in subsection 95(1) of the Act is replaced by the following:

"controlled foreign affiliate"
« société étrangère affiliée contrôlée »

"controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(*a*) is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(*h*),

(*b*) is, at that time, controlled by the taxpayer, or

(*c*) would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by

(i) the taxpayer,

(ii) each person that does not deal at arm's length with the taxpayer,

(iii) each of not more than four persons (other than the taxpayer or a person described in subparagraph (ii)) resident in Canada, and

(iv) each person that does not deal at arm's length with a person resident in Canada described in subparagraph (iii);

(2) Paragraphs (*a*) to (*c*) of the definition "excluded property" in subsection 95(1) of the Act are replaced by the following:

(*a*)) used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business carried on by it,

(*b*) shares of the capital stock of another foreign affiliate of the taxpayer where all or substantially all of the fair market value of the property of the other foreign affiliate is attributable to property, of that other foreign affiliate, that is excluded property,

(*c*) property all or substantially all of the income from which is, or would be, if there were income from the property, income from an active business including income that would be deemed to be income from an active business by paragraph (2)(*a*) if that paragraph were read without reference to subparagraph (v), or (*c*.1) property arising under or as a result of an agreement that

(i) provides for the purchase, sale or exchange of currency, and

(ii) can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to an amount that was receivable under an agreement that relates to the sale of excluded property or with respect to an amount that was receivable and was a property described in paragraph (*c*), of fluctuations in the value of the currency in which the amount receivable was denominated,

(3) The description of B in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

B is the portion of the affiliate's income (to the extent that the income is not included under the description of A), or of the affiliate's taxable capital gains that can reasonably be considered to have accrued after its 1975 taxation year, as the case may be, for the year

(*a*) from the dispositions of property other than dispositions of excluded property,

(*b*) from dispositions of excluded property to which any of paragraphs (2)(*c*), (*c*.2), (*d*), (*d*.1), (*e*), (*e*.1), (*e*.3) to (*e*.5) and (*f*.4) and 88(3)(*a*) applies, or

(*c*) arising because of a gain under subsection 40(3) in respect of a share because of a dividend on the share referred to in subparagraph (2)(*e*.3)(iv) or (*e*.4)(v),

(4) The description of E in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

E is the amount of the foreign affiliate's allowable capital losses for the year from dispositions of property (other than excluded property) that may reasonably be considered to have accrued after its 1975 taxation year,

(5) Subparagraph (*a*)(i) of the definition "investment business" in subsection 95(1) of the Act is replaced by the following:

(i) a business carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(A) of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

(B) of the country in which the business is principally carried on, or

(C) if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, or

(6) Paragraph (*b*) of the definition "investment business" in subsection 95(1) of the Act is replaced by the following:

(*b*) the affiliate or, if the affiliate carries on the business as a qualifying member of a partnership (which partnership is referred to in this paragraph and paragraph (2)(*t*) as the "operating partnership"), the operating partnership employs

(i) more than five employees full time in the active conduct of the business, or

(ii) the equivalent of more than five employees full time in the active conduct of the business taking into consideration only the services provided by its employees and the services provided outside Canada to the affiliate or to the operating partnership by employees of

(A) a corporation related to the affiliate (otherwise than because of a right referred to in paragraph 251(5)(*b*)),

(B) in the case where the affiliate carries on the business as a member of the operating partnership

(I) a person (referred to in this subparagraph as a "providing member") who was a qualifying member of the operating partnership,

(II) if the affiliate was a qualifying member of the operating partnership, a designated corporation in respect of the affiliate, or

(III) if the affiliate was a qualifying member of the operating partnership, a designated partnership in respect of the affiliate, or

(C) in the case where the affiliate carries on the business (otherwise than as a member of the operating partnership),

(I) a corporation (referred to in this subparagraph as a "providing shareholder") that was a qualifying shareholder of the affiliate,

(II) a designated corporation in respect of the affiliate, or

(III) a designated partnership in respect of the affiliate,

if the corporations referred to in clause (A), the providing members referred to in subclause (B)(I), the designated corporations referred to in subclause (B)(II) or (C)(II), the designated partnerships referred to in subclause (B)(III) or (C)(III), or the providing shareholders referred to in subclause (C)(I) receive compensation from the affiliate or the operating partnership, as the case may be, for the services provided to the affiliate or to the operating partnership, as the case may be, by those employees the value of which is not less than the cost to those corporations, members, partnerships or shareholders of the compensation paid or accruing to the benefit of those employees that performed the services during the time the services were performed by those employees;

(7) Subsection 95(1) of the Act is amended by adding the following in alphabetical order:

"entity"
« entité »

"entity" includes an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust;

"taxable Canadian business"
« entreprise canadienne imposable »

"taxable Canadian business", at any time of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to in this definition as the "operator"), means a business the income from which would, if there were income from the business for the operator's taxation year or fiscal period that includes that time, be income

(*a*) that is included in computing the foreign affiliate's taxable income earned in Canada under subparagraph 115(1)(*a*)(ii), and

(*b*) that is not, because of a tax treaty with a country, exempt from tax under Part I;

(8) Paragraph 95(2)(*a*) of the Act is replaced by the following:

(*a*) in computing the income or loss from an active business for a taxation year of a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or to which the taxpayer is related throughout the year, there shall be included any income or loss of the particular foreign affiliate for that year from sources in a country other than Canada that would otherwise be income or loss from property of the particular foreign affiliate for the year to the extent that

(i) the income or loss

(A) is derived by the particular foreign affiliate from activities that can reasonably be considered to be directly related to active business activities carried on in a country other than Canada by

(I) another non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year, or

(II) a life insurance corporation that is resident in Canada throughout the year and that is the taxpayer, a person who controls the taxpayer or a person controlled by the taxpayer, and

(B) would be included in computing the amount prescribed to be the earnings or loss from an active business carried on in a country other than Canada of

(I) the non-resident corporation referred to in subclause (A)(I), or

(II) the life insurance corporation referred to in subclause (A)(II)

if that non-resident corporation or that life insurance corporation were a foreign affiliate of the taxpayer and the income were earned by it,

(ii) the income or loss is derived from amounts that were paid or payable, directly or indirectly, to the particular foreign affiliate or a partnership of which the particular foreign affiliate was a member

(A) by

(I) a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year, or

(II) a partnership of which a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which that non-resident corporation was a member of the partnership

to the extent that those amounts that were paid or payable are for expenditures that would, if the non-resident corporation or the partnership were a foreign affiliate of the taxpayer, be deductible by it in the year or a subsequent taxation year in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(B) by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year, or

(II) a partnership of which another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which that other foreign affiliate was a member of the partnership

to the extent that those amounts that were paid or payable are for expenditures that were or would be, if the partnership were a foreign affiliate of the taxpayer, deductible in the year or a subsequent taxation year by the other foreign affiliate or the partnership in computing the amounts prescribed to be its earnings or loss from an active business, other than an active business carried on in Canada,

(C) by a partnership of which the particular foreign affiliate is a qualifying member throughout each period, in the fiscal period of the partnership that ends in the year, in which the particular foreign affiliate was a member of the partnership, to the extent that those amounts that were paid or payable were for expenditures that would, if the partnership were a foreign affiliate of the taxpayer, be deductible in the year or a subsequent taxation year in computing the amounts prescribed to be its earnings or loss from an active business carried on by it outside Canada,

(D) by another foreign affiliate of the taxpayer (in this clause referred to as the "second affiliate") to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the amounts are paid or payable by the second affiliate, in respect of any particular period in the year,

(I) under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or

(II) on an amount payable for property acquired for the purpose of gaining or producing income from property

where

(III) the property is, throughout the particular period, excluded property of the second affiliate that is shares of a corporation (in this clause referred to as the "third affiliate") which is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the taxpayer in respect of which the taxpayer has a qualifying interest or to which the taxpayer is related,

(IV) the second affiliate and the third affiliate are resident in the same country for each of their taxation years (each of which taxation years is referred to in subclause (V) as a "relevant taxation year" of the second affiliate or of the third affiliate, as the case may be) that end in the year, and

(V) in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

1. that affiliate is subject to income taxation in that country in that relevant taxation year, or

2. the members or shareholders of that affiliate (which, for the purpose of this sub-subclause, includes a person that has, directly or indirectly, an interest in a share of, or in an equity interest in, the affiliate) at the end of that relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends or would be so subject to income taxation in that country if that affiliate had income for that relevant taxation year and the income of those members or shareholders for their taxation years in which that relevant taxation year ends consisted only of their share of income of that affiliate for that relevant taxation year, or

(E) by a life insurance corporation that is resident in Canada and that is the taxpayer, a person who controls the taxpayer or a person controlled by the taxpayer, to the extent that those amounts that were paid or payable were for expenditures that are deductible in the year or a subsequent taxation year by the life insurance corporation in computing its income or loss from carrying on its life insurance business outside Canada and are not deductible in the year or a subsequent taxation year in computing its income or loss from carrying on its life insurance business in Canada,

(iii) the income or loss is derived by the particular foreign affiliate from the factoring of trade accounts receivable acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the accounts receivable arose in the course of an active business carried on in a country other than Canada by the non-resident corporation,

(iv) the income or loss is derived by the particular foreign affiliate from loans or lending assets acquired by the particular foreign affiliate, or a partnership of which the particular foreign affiliate was a member, from a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year to the extent that the loans or lending assets arose in the course of an active business carried on in a country other than Canada by the non-resident corporation,

(v) the income or loss is derived by the particular foreign affiliate from the disposition of excluded property that is not capital property, or

(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce its risk, with respect to an amount required by this paragraph to be included in computing the particular foreign affiliate's income or loss from an active business, of fluctuations in the value of the currency in which the amount was denominated;

(9) Subparagraph 95(2)(*a*.1)(i) of the Act is replaced by the following:

(i) it is reasonable to conclude that the cost to any person of the property (other than property that is designated property and that was sold to non-resident persons other than the affiliate or sold to the affiliate for sale to non-resident persons) is relevant in computing the income from a business carried on by the taxpayer or by a person resident in Canada with whom the taxpayer does not deal at arm's length or is relevant in computing the income from a business carried on in Canada by a non-resident person with whom the taxpayer does not deal at arm's length, and

(10) Paragraph 95(2)(*b*) of the Act is replaced by the following:

(*b*) the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, if

(i) the amount paid or payable in consideration for those services or for the undertaking to provide those services

(A) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by

(I) any taxpayer of whom the affiliate is a foreign affiliate, or

(II) another taxpayer who does not deal at arm's length with any taxpayer of whom the affiliate is a foreign affiliate, or

(B) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a foreign affiliate of

(I) any taxpayer of whom the affiliate is a foreign affiliate, or

(II) another taxpayer who does not deal at arm's length with any taxpayer of whom the affiliate is a foreign affiliate, or

(ii) the services are, or are to be, performed by

(A) the taxpayer,

(B) a person resident in Canada with whom the taxpayer does not deal at arm's length,

(C) a partnership any member of which is a person described in clause (A) or (B), or

(D) a partnership in which any person or partnership described in any of clauses (A) to (C) has, directly or indirectly, a partnership interest;

(11) Paragraphs 95(2)(*d*) to (*e*.1) of the Act are replaced by the following:

(*c*.1) paragraph (*c*.2) applies to a specified vendor, in respect of a particular corporation resident in Canada referred to in the definition "specified vendor" in subsection (3.2), (which specified vendor is referred to in this paragraph and paragraph (*c*.2) as the "vendor") if

(i) the vendor disposes at any time of a share of the capital stock of a foreign affiliate, of the particular corporation, (which share is referred to in this paragraph, paragraphs (*c*.2) to (*c*.4) and subsection (3.3) as the "specified share", which time is referred to in this paragraph and paragraphs (*c*.2) to (*c*.4) as the "original disposition time" of the specified share and which foreign affiliate is referred to in paragraphs (*c*.4) and (*c*.6) and in subsection (3.3) as the "disposed foreign affiliate") to a person or partnership (referred to in this paragraph as the "purchaser") that is, immediately after that time, a specified purchaser in respect of the particular corporation,

(ii) immediately before the original disposition time, the specified share is excluded property of the vendor (or would be excluded property of the vendor if the vendor were, immediately before the original disposition time, a foreign affiliate of the particular corporation),

(iii) the vendor would, were this Act read without reference to paragraph (*c*.2), have a taxable capital gain from the disposition of the specified share, and

(iv) none of paragraphs (2)(*c*), (*d*) to (*e*.1) and (*e*.3) to (*e*.5) and 88(3)(*a*) applies to the vendor in respect of the disposition of the share;

(*c*.2) if this paragraph applies to a vendor, the following rules apply:

(i) where the vendor is not a partnership, the vendor's proceeds of disposition (determined without reference to subsection 93(1)) from the disposition of the specified share are deemed to be an amount that is equal to

(A) if clause (B) does not apply to the vendor in respect of the disposition, the total of the vendor's adjusted cost base of the specified share and the amount, if any, that would be designated under subsection 93(1) because of subsection 93(1.1) in respect of the specified share if the specified share was disposed of for consideration equal to its fair market value at the original disposition time of the specified share, or

(B) if the vendor is a controlled foreign affiliate of the particular corporation resident in Canada at the end of the vendor's taxation year that includes the original disposition time of the specified share and the particular corporation so elects in respect of the disposition in prescribed manner and within the prescribed time, the greater of

(I) the amount determined by clause (A) in respect of the specified share, and

(II) the amount that is the lesser of the fair market value of the consideration received by the vendor in respect of the disposition and the amount that the particular corporation designates in the election,

(ii) where the vendor is a partnership of which a particular foreign affiliate of the particular corporation referred to in the definition "specified vendor" in subsection (3.2) is a member, for the purpose of computing the particular foreign affiliate's taxable capital gain from the disposition by the partnership of the specified share, the vendor's proceeds of disposition from the disposition of the specified share are deemed to be an amount that is equal to

(A) if clause (B) does not apply to the vendor in respect of the disposition, the total of the vendor's adjusted cost base of the specified share and the amount of a dividend, if any, that would be deemed by subsection 93(1.2) to have been received immediately before the original disposition time because of subsection 93(1.3) in respect of the specified share in respect of the particular foreign affiliate on the assumptions that

(I) the specified share is a share referred to in subsecti on 93(1.3) in respect of the particular foreign affiliate,

(II) no other share of the disposed foreign affiliate was disposed of at the original disposition time of the specified share,

(III) the particular foreign affiliate was the only member of the partnership, and

(IV) the specified share was disposed of for consideration equal to its fair market value at the original disposition time of the specified share, or

(B) if the particular foreign affiliate is a controlled foreign affiliate of the particular corporation resident in Canada at the end of particular foreign affiliate's taxation year that includes the original disposition time of the specified share and the particular corporation so elects in respect of the disposition in prescribed manner and within the prescribed time, the greater of

(I) the amount determined by clause (A) in respect of the specified share, and

(II) the amount that is the lesser of the fair market value of the consideration received by the vendor in respect of the disposition and the amount that the particular corporation designates in the election,

(iii) the purchaser's cost of the specified share is deemed to be an amount that is equal to the fair market value, at the original disposition time, of the specified share,

(iv) the vendor's cost of a property that was received as consideration for the disposition of the specified share is deemed to be an amount that is equal to the fair market value of the property at the original disposition time of the specified share, and

(v) the vendor that is a foreign affiliate of the particular corporation resident in Canada or a foreign affiliate of the particular corporation resident in Canada that is a member of a partnership that is the vendor (which vendor or foreign affiliate is referred to in this subparagraph and paragraph (*c*.3) as the "relevant foreign affiliate") is deemed to have an unadjusted suspended gain in respect of a specified share disposed of, at the original disposition time, by the vendor that is equal to twice the amount, if any, by which

(A) the amount that would, but for the application of this paragraph, have been the relevant foreign affiliate's taxable capital gain in respect of that disposition, if the vendor's proceeds of disposition in respect of that disposition were equal to the fair market value of the consideration received by the vendor in respect of that disposition,

exceeds

(B) the amount of the relevant foreign affiliate's taxable capital gain in respect of that disposition;

(*c*.3) the relevant foreign affiliate referred to in paragraph (*c*.2) is deemed to have a capital gain from the disposition of the specified share equal to the amount prescribed to be the adjusted suspended gain in respect of the specified share and to have paid to the government of a country an amount equal to the amount prescribed to be the adjusted allocable tax in respect of the adjusted suspended gain in respect of the specified share at the earlier of

(i) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation that holds, immediately before that first time, the specified share makes a triggering disposition of the specified share, and

(ii) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation (which specified purchaser is referred to in this subparagraph as the "current holder") that holds, immediately before that first time, the specified share ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

(*c*.4) for the purpose of paragraph (*c*.3), if a specified purchaser (referred to in this paragraph as the "current holder") in respect of a particular corporation resident in Canada holds the specified share and that share is redeemed, acquired or cancelled (otherwise than on a dividend-like redemption of that share) by the disposed foreign affiliate, the specified share is deemed to continue to exist, and the current holder is deemed to continue to hold that share, until the time that the current holder ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

(*c*.5) for the purpose of paragraph (*c*.3), if a specified purchaser (referred to in this paragraph as a "current holder") in respect of a particular corporation resident in Canada holds a specified share in respect of the particular corporation and the specified share ceases to exist as a result of a dissolution, winding-up, cessation of existence, merger or combination described in paragraph (*a*) or (*b*) of the definition "specified discontinuance" in subsection (3.3) or subparagraph (*a*)(i) or (ii) of the definition "triggering disposition" in subsection (3.3), the specified share is deemed to continue to exist, and the current holder is deemed to continue to hold that share, until the time that the current holder ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

(*c*.6) for the purpose of paragraph (*c*.3), where a specified share in respect of a particular corporation resident in Canada is exchanged for another share of the disposed foreign affiliate, the other share is deemed to be the specified share in respect of the corporation resident in Canada;

(*d*) if there has been a foreign merger (within the meaning of subsection 87(8.1)) of two or more predecessor foreign corporations (other than a foreign merger to which paragraph (*d*.1) applies) to form a new foreign corporation that was, immediately after the foreign merger, a foreign affiliate of a corporation resident in Canada, and a particular foreign predecessor corporation to the foreign merger was, immediately before the foreign merger, a foreign affiliate of the corporation resident in Canada, the following rules apply:

(i) each property of the new foreign corporation that was a property of the particular foreign predecessor corporation immediately before the foreign merger is deemed to have been disposed by the particular foreign predecessor corporation to the new foreign corporation for proceeds of disposition equal to

(A) where the property was excluded property of the particular foreign predecessor corporation immediately before the foreign merger, an amount that is equal to the relevant cost base, immediately before the foreign merger, of the property to the particular foreign predecessor corporation, or

(B) in any other case, an amount equal to the fair market value, immediately before the foreign merger, of the property,

(ii) the cost of the property to the new foreign corporation immediately after the foreign merger is deemed to be an amount equal to the particular foreign predecessor corporation's proceeds of disposition of the property determined by subparagraph (i),

(iii) each shareholder of the particular foreign predecessor corporation that was, immediately before the foreign merger, a specified vendor in respect of the corporation resident in Canada

(A) is deemed to have disposed, on the foreign merger, of each share of the particular foreign predecessor corporation that, immediately before the foreign merger, was held by the shareholder and was excluded property of the shareholder, for proceeds of disposition that are equal to

(I) unless a valid election is made under subclause (II), the adjusted cost base, immediately before the foreign merger, of the share, to the shareholder, and

(II) the amount that the corporation resident in Canada elects in respect of the disposition in the prescribed manner and in the prescribed time, which amount may not be less than the adjusted cost base, immediately before the foreign merger, of the share, to the shareholder and may not be greater than the fair market value, immediately before the foreign merger, of the share, and

(B) is deemed to have acquired each share of the new foreign corporation received on the foreign merger by the shareholder in exchange for a share described in clause (A) at a cost equal to the amount determined by the formula

$$A \times B/C$$

where

A is the total of all amounts each of which is the shareholder's proceeds of disposition of a share described in clause (A),

B is the fair market value, immediately after the foreign merger, of the particular share of the new foreign corporation, and

C is the fair market value, immediately after the foreign merger, of all shares of the new foreign corporation received on the foreign merger by the shareholder, and

(iv) the new foreign corporation is deemed to be the same person as, and a continuation of, the particular foreign predecessor corporation

(A) for the purposes of paragraphs (*c*.1) to (*c*.6), in respect of the disposition of a specified share received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation,

(B) for the purposes of paragraphs (*f*.3) to (*f*.93), in respect of the disposition of a specified property received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation, and

(C) for the purposes of paragraphs (*h*) to (*h*.5), in respect of the disposition of a specified property received on the foreign merger by the new foreign corporation and disposed of, on the foreign merger, to the new foreign corporation by the particular foreign predecessor corporation,

(v) the taxation year of the particular predecessor foreign corporation that would otherwise include the time of the foreign merger is deemed to have ended immediately before that time, and

(vi) where the fair market value of the share referred to in clause (iii)(A), immediately before the foreign merger, exceeds the fair market value of the share referred to in clause (iii)(B), immediately after the foreign merger, and it can reasonably be considered that all or any portion of the excess is a benefit that that shareholder desired to have conferred on another shareholder of the new corporation,

(A) the amount of the benefit is deemed to be income from property that is the shares of the new foreign corporation of the other shareholder on whom the benefit was conferred that was received, immediately after the foreign merger, and

(B) where the shares of the new foreign corporation held by the other shareholder on whom the benefit is conferred are excluded property to that shareholder or would be excluded property to that shareholder if that shareholder were a foreign affiliate of the corporation resident in Canada, the amount of the benefit is to be added, immediately after the foreign merger, in computing the adjusted cost base of the shares of the new corporation held at that time by that shareholder;

(*d*.1) if there has been a foreign merger (within the meaning of subsection 87(8.1)) of two or more predecessor foreign corporations, in respect of each of which a taxpayer's surplus entitlement percentage was not less than 90% immediately before the merger, to form a new foreign corporation in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90% (other than a foreign merger where, under the income tax law of the country in which the predecessor foreign corporations were resident immediately before the merger, any income, gain or loss was recognized in respect of any property of a predecessor foreign corporation that became property of the new foreign corporation in the course of the merger)

(i) each property of the new foreign corporation that was a property of a predecessor foreign corporation immediately before the merger is deemed to have been disposed of by the predecessor foreign corporation immediately before the merger for proceeds of disposition equal to the cost amount of the property to the predecessor foreign corporation at that time,

(ii) the new foreign corporation is deemed to be the same corporation as, and a continuation of, the predecessor foreign corporation for the purposes of

(A) this subsection and the definition "foreign accrual property income" in subsection (1), with respect to any disposition by the new foreign corporation of property owned by the predecessor corporation immediately before the merger, and

(B) paragraphs (*c*.1) to (*c*.6), (*f*.1) to (*f*.93) and (*h*) to (*h*.5),

(iii) for greater certainty, nothing in this paragraph affects the determination of whether any property of a predecessor foreign corporation is disposed of on a foreign merger other than a foreign merger to which this paragraph applies, and

(iv) subsection 87(4) applies to each foreign affiliate of the taxpayer that, immediately before the merger, owned shares of the capital stock of a predecessor foreign corporation as if the reference in that subsection to

(A) the word "amalgamation" were a reference to the expression "foreign merger" and with any other modifications that the circumstances require,

(B) the expression "predecessor corporation" were a reference to the expression "predecessor foreign corporation" and with any other modifications that the circumstances require,

(C) the expression "new corporation" were a reference to the expression "new foreign corporation" and with any other modifications that the circumstances require, and

(D) the expression "adjusted cost base" were a reference to the expression "relevant cost base" and with any other modifications that the circumstances require;

(*e*) if, at a particular time, a shareholder (other than a person resident in Canada) of a foreign affiliate (referred to in this paragraph as the "disposed foreign affiliate") of a particular corporation resident in Canada that is a specified purchaser in respect of the particular corporation receives, in the course of a liquidation and dissolution (other than a liquidation and dissolution to which paragraph (*e*.1) applies) of the disposed foreign affiliate, a property from the disposed foreign affiliate, the following rules apply:

(i) the disposed foreign affiliate's proceeds of disposition of the property are deemed to be

(A) if the property is excluded property of the disposed foreign affiliate at the particular time, an amount that is equal to the relevant cost base, immediately before the particular time, of the property to the disposed foreign affiliate, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost of the property to the shareholder immediately after the particular time is deemed to be an amount equal to the disposed foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the property is deemed to have been received by the shareholder as proceeds of disposition of shares of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution,

(iv) each particular share of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution is deemed to have been disposed of for proceeds that are equal to the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is the cost to the shareholder, immediately after the particular time, of a property received by the shareholder as consideration for the disposition of the shares of the disposed foreign affiliate disposed of in the course of the liquidation and dissolution,

B is the total of all amounts each of which is the amount of a debt that was owing by the disposed foreign affiliate, or any other obligation of the disposed foreign affiliate to pay an amount that was outstanding, immediately before it was assumed or cancelled, as the case may be, by the shareholder,

C is the fair market value, immediately before the commencement of the liquidation and dissolution, of the particular share, and

D is the fair market value, immediately before the commencement of the liquidation and dissolution, of all the shares of the disposed foreign affiliate disposed of by that shareholder,

(v) any gain from the disposition of the shares of the disposed foreign affiliate disposed of by the shareholder in the course of the liquidation and dissolution that, but for this subparagraph, would be a gain from the disposition of excluded property of the shareholder, is deemed to be the lesser of

(A) the amount of the gain as otherwise determined, and

(B) such amount, not exceeding the amount referred to in clause (A), as the particular corporation resident in Canada elects in prescribed manner and within the prescribed time, and

(vi) the shareholder is deemed to be the same person as, and a continuation of, the disposed foreign affiliate

(A) for the purposes of paragraphs (*c*.1) to (*c*.6), in respect of the disposition of a specified share received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution,

(B) for the purposes of paragraphs (*f*.3) to (*f*.93), in respect of the disposition of a specified property received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution, and

(C) for the purposes of paragraphs (*h*) to (*h*.5), in respect of the disposition of a specified property received by the shareholder and disposed of, to the shareholder, by the disposed foreign affiliate in the course of the liquidation and dissolution, and

(vii) the taxation year of the disposed foreign affiliate that would otherwise include the time that the disposed foreign affiliate is dissolved is deemed to have ended immediately before that time;

(*e*.1) if there has been a liquidation and a dissolution of a foreign affiliate (in this paragraph referred to as the "disposing affiliate") of a taxpayer in respect of which, immediately before the liquidation, the taxpayer's surplus entitlement percentage was not less than 90% (other than a liquidation and a dissolution where, under the income tax law of the country in which the disposing affiliate was resident immediately before the liquidation, any income, gain or loss was recognized by the disposing affiliate in respect of any property distributed by it in the course of the liquidation to another foreign affiliate of the taxpayer):

(i) each property of the disposing affiliate that was so distributed to another foreign affiliate of the taxpayer is deemed to have been disposed of by the disposing affiliate for proceeds of disposition equal to the cost amount of the property to the disposing affiliate immediately before the distribution,

(ii) the other affiliate is deemed to be the same corporation as, and a continuation of, the disposing affiliate for the purposes of

(A) this subsection and the definition "foreign accrual property income" in subsection (1), with respect to any disposition by the other affiliate of property owned by the disposing affiliate immediately before the liquidation, and

(B) paragraphs (*c*.1) to (*c*.6), (*f*.1) to (*f*.93) and (*h*) to (*h*.5), and

(iii) the other affiliate's proceeds of disposition of the shares of the capital stock of the disposing affiliate disposed of in the course of the liquidation is deemed to be the adjusted cost base of those shares to the other affiliate immediately before the disposition;

(*e*.2) for the purpose of paragraph (*e*.1), a redemption, an acquisition or a cancellation of shares of a foreign affiliate of a corporation resident in Canada is deemed to be a liquidation and a dissolution of the foreign affiliate, if

(i) the surplus entitlement percentage of the corporation resident in Canada, in respect of the foreign affiliate, immediately before the redemption, acquisition or cancellation, is more than 90%, the surplus entitlement percentage of the corporation resident in Canada, in respect of the foreign affiliate is, immediately after the redemption, acquisition or cancellation, nil, and the foreign affiliate has no issued and outstanding shares immediately after the redemption, acquisition or cancellation, or

(ii) in the course of the redemption, acquisition or cancellation, property that has a fair market value equal to or greater than 90% of the fair market value, immediately before the redemption, acquisition or cancellation, of the property owned by the foreign affiliate is, because of the redemption, acquisition or cancellation, distributed to the shareholders of the foreign affiliate;

(*e*.3) if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a particular corporation resident in Canada, that is a specified purchaser in respect of the particular corporation receives (otherwise than in the course of a liquidation and a dissolution of the foreign affiliate or a merger or combination of corporations involving the foreign affiliate) a property from the foreign affiliate as a dividend or distribution on a share of the foreign affiliate, notwithstanding subsection 52(2), the following rules apply:

(i) the foreign affiliate's proceeds of disposition of the property are deemed to be

(A) if the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base of the property to the foreign affiliate immediately before the particular time, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost of the property to the shareholder immediately after the particular time is deemed to be an amount equal to the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the amount of that dividend or distribution, in respect of the property, is deemed to be equal to the amount of the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i), and

(iv) where, but for this subparagraph, the shareholder would, because of subsection 40(3), have a gain in respect of the share because of the dividend or distribution and the share is excluded property of the shareholder (or would be excluded property of the shareholder if the shareholder were a foreign affiliate of the particular corporation), for the purpose of applying subsection 40(3), the amount prescribed by paragraph 5900(1)(*c*) of the Regulations to have been paid out of the pre-acquisition surplus of the particular corporation's foreign affiliate from which the property was received, otherwise determined, in respect of the dividend or distribution in respect of the share is deemed to be the lesser of

(A) the amount that, but for this subparagraph, would be so prescribed, and

(B) the amount, not exceeding the amount referred to in clause (A), that the particular corporation elects in prescribed manner and within the prescribed time;

(*e*.4) if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a particular corporation resident in Canada, that is a specified purchaser in respect of the particular corporation receives (otherwise than in the course of the liquidation and dissolution of the foreign affiliate or a merger or combination of corporations that includes the foreign affiliate) a property from the foreign affiliate as consideration in respect of a dividend-like redemption of a share of the foreign affiliate by the foreign affiliate, the following rules apply:

(i) the foreign affiliate's proceeds of disposition of the property are deemed to be

(A) where the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base of the property to the foreign affiliate immediately before the particular time, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost immediately after the particular time of the property to the shareholder is deemed to be an amount equal to the amount of the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the property is deemed to have been received by the shareholder as a dividend on the share and the amount of that dividend, in respect of the property, is deemed to be equal to the amount of the proceeds of disposition of the property determined by subparagraph (i),

(iv) if the share is excluded property of the shareholder (or would be excluded property of the shareholder if the shareholder were a foreign affiliate of the particular corporation), the shareholder is deemed to have disposed of the share for proceeds of disposition of an amount equal to the cost amount of the share to the shareholder immediately before the disposition, and

(v) where, but for this subparagraph, the shareholder would, because of subsection 40(3), have a gain in respect of the share referred to in subparagraph (iv) because of the dividend referred to in subparagraph (iii) received by the shareholder in respect of the redemption of the share, for the purposes of applying subsection 40(3), the amount prescribed by paragraph 5900(1)(*c*) of the Regulations to have been paid out of the pre-acquisition surplus of the foreign affiliate — of the corporation resident in Canada — from which the property was received, otherwise determined, in respect of the dividend referred to in subparagraph (iii) in respect of the share is deemed to be the lesser of

(A) the amount that, but for this subparagraph, would be so prescribed, and

(B) the amount, not exceeding the amount referred to in clause (A), that the corporation resident in Canada elects in prescribed manner and within the prescribed time;

(*e*.5) if, at a particular time, a shareholder (other than a person resident in Canada), of a foreign affiliate of a corporation resident in Canada, that is a specified purchaser in respect of the corporation resident in Canada receives (otherwise than in the course of a dividend-like redemption, a liquidation and dissolution of the foreign affiliate or a merger or combination of corporations that includes the foreign affiliate) a property from the foreign affiliate as consideration in respect of a redemption, acquisition or cancellation (in this paragraph referred to as the "particular redemption") of a particular share of the foreign affiliate by the foreign affiliate as part of a redemption, acquisition or cancellation (in this paragraph referred to as the "total redemption") of one or more shares (including the particular share) of the foreign affiliate held by the shareholder, the following rules apply:

(i) the foreign affiliate's proceeds of disposition of the property are deemed to be

(A) where the property is excluded property of the foreign affiliate at the particular time, an amount that is equal to the relevant cost base, immediately before the particular time, of the property to the foreign affiliate, or

(B) in any other case, an amount equal to the fair market value, immediately before the particular time, of the property,

(ii) the cost of the property to the shareholder immediately after the particular time is deemed to be an amount equal to the foreign affiliate's proceeds of disposition of the property determined by subparagraph (i),

(iii) the property is deemed to have been received by the shareholder as proceeds of disposition of shares of the foreign affiliate disposed of by the shareholder in the course of the particular redemption,

(iv) the particular share disposed of to the foreign affiliate because of the particular redemption is deemed to have been disposed of for proceeds that are equal to the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the total of all amounts each of which is the cost, determined in subparagraph (ii), to the shareholder, of a property received by the shareholder as consideration for the disposition by the shareholder of a share or shares of the foreign affiliate redeemed in the course of the total redemption, B is the total of all amounts each of which the amount of a debt that was owing by the foreign affiliate, or any other obligation of the foreign affiliate to pay an amount that was outstanding, immediately before it was assumed or cancelled, as the case may be, by the shareholder in respect of the total redemption,

C is

(A) where the particular share was held by the shareholder at the time immediately before the commencement of the total redemption, the fair market value, at that time, of the particular share, and

(B) where the particular share was acquired by the shareholder after the commencement of the total redemption, the fair market value, at the time of its acquisition, of the particular share, and

D is the total of

(A) the fair market value, immediately before the commencement of the total redemption, of all shares of the foreign affiliate held by the shareholder before the commencement of the total redemption and redeemed as part of the total redemption while held by the shareholder, and

(B) the total of all amounts each of which is the fair market value at the time of acquisition of a share of the foreign affiliate acquired after the commencement of the total redemption by the shareholder and redeemed as part of the total redemption while held by the shareholder, and

(v) any gain from the disposition of a particular share of the foreign affiliate disposed of by the shareholder in the course of the total redemption that, but for this subparagraph, would be a gain from the disposition of excluded property of the shareholder, is deemed to be the lesser of

(A) the amount of the gain as otherwise determined, and

(B) the amount, not exceeding the amount referred to in clause (A), that the corporation resident in Canada elects in prescribed manner and within the prescribed time;

(*e*.6) for the purposes of paragraphs (*e*) and (*e*.3) to (*e*.5), if the shareholder is a partnership, and a foreign affiliate of a corporation resident in Canada is, at any time, a member of the partnership, for the purposes of determining the foreign affiliate's income from the partnership

(i) shares of a foreign affiliate of the corporation resident in Canada that are property of the partnership, or are deemed under this paragraph to be property of the partnership, are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of the shares that

(A) the fair market value, at that time, of the member's partnership interest in the partnership

is of

(B) the fair market value, at that time, of all partnership interests in the partnership,

(ii) each amount determined under any of paragraphs (*e*) and (*e*.3) to (*e*.5) in respect of the partnership in respect of the shares of the foreign affiliate described in subparagraph (i) is deemed to be the amount determined under that paragraph in respect of the foreign affiliate in respect of those shares, and

(iii) the income, gain or loss derived by the partnership, while the foreign affiliate is a member of the partnership, in respect of the shares deemed by subparagraph (i) to be owned by the foreign affiliate

(A) is to be determined as if the partnership were the foreign affiliate, and

(B) is deemed to be an income or a loss or a taxable capital gain or an allowable capital loss, as the case may be, of the foreign affiliate from the partnership and not to be an income or a loss or a taxable capital gain or an allowable capital loss of any other member of the partnership;

(12) The portion of paragraph 95(2)(*f*) of the Act before subparagraph (ii) is replaced by the following:

(*f*) except as otherwise provided in this subsection, each capital gain, capital loss, taxable capital gain and allowable capital loss of a foreign affiliate of the taxpayer from the disposition of property by a person or partnership is to be computed in respect of the taxpayer in accordance with this Part, read without reference to section 26 of the *Income Tax Application Rules*, as though the affiliate were resident in Canada,

(i) if that gain or loss is the gain or loss of a foreign affiliate from the disposition of property to which any of paragraphs (*c*), (*c*.2), (*d*) to (*e*), (*e*.3) to (*e*.5), (*f*.4) and 88(3)(*a*) applies or from any other disposition of property (other than excluded property), in Canadian currency, and

(13) The portion of paragraph 95(2)(*f*) of the Act after subparagraph (ii) and before subparagraph (iii) is replaced by the following:

except that in computing any such gain or loss from the disposition of property owned by the person or partnership there shall not be included such portion of the gain or loss, as the case may be, that can reasonably be considered to have accrued during the period that the affiliate was not a foreign affiliate of

(14) Paragraph 95(2)(*f*) of the Act is amended by deleting the word "or" at the end of subparagraph (vi), by adding the word "or" at the end of subparagraph (vii) and by adding the following after subparagraph (vii):

(viii) a partnership if the total of all amounts each of which is the fair market value of a partnership interest in the partnership owned by a person described in any of subparagraphs (iii) to (vii) is greater than or equal to 90% of the fair market value of all partnership interests in the partnership;

(15) Paragraph 95(2)(*g*) of the Act is replaced by the following:

(*f*.1) the income or loss of a foreign affiliate of a taxpayer from property, or the income or loss of a foreign affiliate of a taxpayer from a business other than an active business, is to be computed in respect of the taxpayer as if

(i) the foreign affiliate were resident in Canada,

(ii) the Act were read without reference to subsections 14(1.01) to (1.03), 17(1) and 18(4) and section 91,

(iii) the income or loss were computed in Canadian currency, and

(iv) there were not included in computing the income or loss the portion of the income or loss that can reasonably be considered to have been realized or to have accrued during any period throughout which the affiliate was not a foreign affiliate of the taxpayer, of a person described in any of subparagraphs (*f*)(iii) to (vii) or of a partnership described in subparagraph (*f*)(viii);

(*f*.2) the income or loss of a foreign affiliate of a taxpayer arising from the disposition of excluded property that is not a capital property (other than a disposition of property to which any of paragraphs (*d*) to (*e*.1), (*e*.3) to (*e*.5) and (*f*.4) and 88(3)(*a*) applies) is to be computed in respect of the taxpayer in the currency of the country in which the affiliate is resident or in another currency that is reasonable in the circumstances;

(*f*.3) paragraph (*f*.4) applies to a specified vendor, in respect of a particular corporation resident in Canada referred to in the definition "specified vendor" in subsection (3.2), (which specified vendor is referred to in this paragraph and paragraphs (*f*.4), (*f*.8) and (*f*.9) as the "vendor") if

(i) the vendor disposes at any time of a property (which property is referred to in this paragraph and paragraphs (*f*.4) and (*f*.5) and (*f*.7) to (*f*.9) as the "specified property" and which time is referred to in this paragraph and paragraphs (*f*.4), (*f*.5), (*f*.8) and (*f*.9) as the "original disposition time" of the specified property) to a person or partnership (in this paragraph referred to as the "purchaser") that is, immediately after that time, a specified purchaser in respect of the particular corporation,

(ii) immediately before the original disposition time, the specified property is excluded property of the vendor (or would be excluded property of the vendor if the vendor were, immediately before the original disposition time, a foreign affiliate of the particular corporation), and

(iii) the vendor would, were this Act read without reference to paragraph (*f*.4), have income or a taxable capital gain from the disposition of the specified property;

(*f*.4) if this paragraph applies to a vendor in respect of a particular disposition of specified property referred to in paragraph (*f*.3), the following rules apply:

(i) the vendor's proceeds from the disposition of the specified property are deemed to be

(A) if clause (B) does not apply to the vendor in respect of the disposition, an amount equal to the vendor's adjusted cost base of the specified property at the original disposition time, or

(B) if the vendor that is a foreign affiliate of the particular corporation resident in Canada is a controlled foreign affiliate of the particular corporation resident in Canada at the end of that vendor's taxation year that includes the original disposition time of the specified property and the particular corporation so elects in respect of the disposition in prescribed manner and within the prescribed time, the greater of

(I) the amount determined by clause (A) in respect of the specified property, and

(II) the amount that is the lesser of the fair market value of the consideration received by that vendor in respect of the disposition and the amount that the particular corporation designates in the election,

(ii) the purchaser's cost of the specified property is deemed to be an amount that is equal to the fair market value of the specified property at the original disposition time,

(iii) the vendor's cost of a particular property that was received as consideration for the disposition of the specified property is deemed to be the fair market value of the particular property at the original disposition time, and

(iv) the vendor that is a foreign affiliate of the particular corporation resident in Canada or a foreign affiliate of the particular corporation resident in Canada that is a member of a partnership that is the vendor (which vendor or foreign affiliate is referred to in this subparagraph and subparagraph (*f*.5) as the "relevant foreign affiliate") is deemed to have an unadjusted suspended income or gain in respect of a specified property disposed of, at the original disposition time, by the specified vendor that is equal to the amount, if any, by which

(A) the amount that is the income or twice the amount of the taxable capital gain, as the case may be, that, but for the application of this paragraph, would have been realized by the relevant foreign affiliate in respect of that disposition,

exceeds

(B) the amount that is the income or twice the amount of the taxable capital gain, as the case may be, that was realized by the relevant foreign affiliate in respect of that disposition;

(*f*.5) the relevant foreign affiliate referred to in subparagraph (*f*.4)(iv) is deemed to have income or a capital gain from the disposition of the specified property equal to the amount prescribed to be the adjusted suspended income or gain in respect of the specified property and to have paid to the government of a country an amount equal to the amount prescribed to be the adjusted allocable tax in respect of the adjusted suspended income or gain in respect of the specified property at the earlier of

(i) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation that holds, immediately before that first time, the specified property makes a triggering disposition of the specified property, and

(ii) the first time, after the original disposition time, that a specified purchaser in respect of the particular corporation (which specified purchaser is referred to in this paragraph and paragraphs (*f*.8) and (*f*.9) as the "current holder") that holds, immediately before that first time, the specified property ceases to be a specified purchaser in respect of the particular corporation otherwise than because of a specified discontinuance of the current holder;

(*f*.6) paragraph (*f*.3) does not apply to a disposition of a property by a person or partnership if

(i) any of paragraphs (2)(*c*), (*c*.2), (*d*), (*d*.1) (*e*), (*e*.1), and (*e*.3) to (*e*.5) and subsections 85.1(5) and 88(3) applies to the person or partnership in respect of the disposition of the property, or

(ii) the property was disposed of

(A) in the ordinary course of an active business of the person or partnership, or

(B) as an adventure or concern in the nature of trade;

(*f*.7) for the purposes of paragraphs (*f*.3) to (*f*.6) and (*f*.8) and (*f*.9) and subsection (3.4), a designated replacement property referred to in clause (*b*)(ii)(A), (B) or (C) of the definition "triggering disposition" in subsection (3.4) is deemed to be the same property as and a continuation of the specified property referred to in that clause;

(*f*.8) for the purposes of paragraphs (*f*.3) to (*f*.7) and (*f*.9) and subsection (3.4), if, at any time, part of a specified property (which specified property is referred to in this paragraph as the "initial specified property") is disposed of by a current holder and the remaining part of the specified property is retained by the current holder,

(i) the part (referred to in this paragraph as the "part interest") of the initial specified property disposed of, at that time, is deemed to be a specified property of the current holder,

(ii) the portion of the unadjusted suspended income or gain attributable to the part interest is deemed to be that proportion of the adjusted suspended income or gain in respect of the whole of the initial specified property that the fair market value at that time of the part interest is of the fair market value at that time of the initial specified property,

(iii) the part (referred to in this paragraph as the "remaining interest") of the initial specified property not disposed of at that time is deemed to be a specified property of the current holder that was disposed of at the original disposition time, and

(iv) the amount of income or gain that would have been realized on the disposition of the remaining interest at the original disposition time is deemed to be the amount, if any, by which the unadjusted suspended income or gain in respect of the initial specified property exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended income or gain in respect of the part interest;

(*f*.9) for the purposes of paragraphs (*f*.3) to (*f*.8), if a current holder disposes, at a particular time, of the whole of a specified property (referred to in this paragraph as the "initial specified property") and as part of a transaction, or series of transactions or events, that includes the disposition of the initial specified property, a specified purchaser in respect of the particular corporation acquires a designated replacement property in respect of the initial specified property,

(i) the designated replacement property (referred to in this paragraph as the "remaining interest") is deemed to be a specified property of the current holder that was disposed of at the original disposition time,

(ii) the unadjusted suspended income or gain in respect of the remaining interest is deemed to be that proportion of the unadjusted suspended income or gain in respect of the whole of the initial specified property (determined without reference to subparagraph (iii)) that the fair market value of the remaining interest, at the time it was acquired, is of the fair market value, at the particular time, of the initial specified property, and

(iii) the unadjusted suspended income or gain in respect of the initial specified property is deemed to be the amount, if any, by which the unadjusted suspended income or gain in respect of the initial specified property (determined without reference to this subparagraph) exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended income or gain in respect of the remaining interest;

(*f*.91) if, at a particular time, a non-resident corporation that, immediately before the particular time, was not a foreign affiliate of a particular taxpayer resident in Canada, or of a person or partnership that would — if the particular taxpayer were a taxpayer referred to in paragraphs (2)(*f*)(iii) to (viii) — be described by any of those subparagraphs (the particular taxpayer or each of those persons or partnerships being referred to in this paragraph and paragraphs (*f*.92), (*f*.93) and (*f*.94) as a "particular Canadian shareholder", the non-resident corporation being referred to in this paragraph and paragraph (*f*.92) as a "particular foreign affiliate" in respect of the particular Canadian shareholder and the particular time being referred to in this paragraph and paragraph (*f*.92) as the "status change time" in respect of the particular foreign affiliate of the particular Canadian shareholder) becomes a foreign affiliate of the particular Canadian shareholder, the following rules apply in computing the particular foreign affiliate's foreign accrual property income in respect of the particular Canadian shareholder or a person or partnership that would — if the person or partnership were a taxpayer referred to in subparagraphs (2)(*f*)(iii) to (viii) — be described by any of those subparagraphs (the particular Canadian shareholder or each of those persons or partnerships is referred to in paragraph (*f*.92) as a "relevant shareholder") for any taxation year of the particular foreign affiliate that ends after the status change time:

(i) for the purpose of determining the cumulative eligible capital of the particular foreign affiliate, at the beginning of its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, in respect of each business other than an active business carried on by the particular foreign affiliate in that taxation year, the particular foreign affiliate is deemed to have disposed, immediately before the beginning of that taxation year, of each eligible property at that time of the particular foreign affiliate in respect of each business carried on by the particular foreign affiliate that is, at that time, a business other than an active business, for proceeds equal to the cost to the particular foreign affiliate of the eligible property at the time of that disposition,

(ii) for the purpose of determining the cost of eligible property to the particular foreign affiliate, and the cumulative eligible capital of the particular foreign affiliate, for its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder and for each subsequent taxation year, in respect of each business other than an active business carried on by the particular foreign affiliate in that taxation year or subsequent taxation year, the particular foreign affiliate is deemed to have acquired, immediately after the beginning of its particular taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, each eligible property of the particular foreign affiliate, immediately before the beginning of the particular year, in respect of each business carried on by the particular foreign affiliate that is immediately before the beginning of the particular year a business, other than an active business, at a cost equal to the lesser of

(A) the fair market value of the eligible property at the status change time, and

(B) the cost to the particular foreign affiliate of the eligible property immediately before the beginning of the particular year,

(iii) eligible property, in respect of a business carried on by the particular foreign affiliate, means a property, right or thing in respect of which the particular foreign affiliate has, after 1971 and before the status change time, made an eligible capital expenditure in respect of the business,

(iv) for the purpose of determining the undepreciated capital cost to the particular foreign affiliate, at the beginning of its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, of its depreciable capital property used or held in the course of carrying on a business, other than an active business, of the particular foreign affiliate in that taxation year,

(A) the particular foreign affiliate is deemed to have disposed, immediately before the beginning of that taxation year, of each depreciable capital property of the particular foreign affiliate, held by the particular foreign affiliate and used or held in the course of carrying on a business of the particular foreign affiliate that is a business other than an active business immediately before the beginning of that year, for proceeds equal to the capital cost to the particular foreign affiliate of the depreciable property at the beginning of that year, and

(B) at the time that is immediately after the time of that disposition, the particular foreign affiliate's undepreciated capital cost of its depreciable capital property, in respect of each such business that is a business other than an active business, is deemed to be nil, and

(v) for the purpose of determining the capital cost and undepreciated capital cost to the particular foreign affiliate of its depreciable capital property used or held in the course of carrying on each business other than an active business carried on by the particular foreign affiliate, for its taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder and for subsequent taxation years, the particular foreign affiliate is deemed to have acquired, at the time that is immediately after the beginning of its particular taxation year that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, each depreciable capital property (each such depreciable capital property referred to in this subparagraph and paragraph (*f*.93) as a "specified depreciable property") that was owned by the particular foreign affiliate and used or held by the particular foreign affiliate, at the time that is immediately before the beginning of the particular taxation year, in the course of the carrying on of a business, other than an active business, of the particular foreign affiliate, at that time, at a capital cost equal to the lesser of

(A) the fair market value of the specified depreciable property at the status change time, and

(B) the capital cost to the particular foreign affiliate of the specified depreciable property at the time immediately before the beginning of the particular taxation year;

(*f*.92) in applying paragraph (*a*) of the description of E in the definition "cumulative eligible capital" in subsection 14(5) in respect of a particular disposition, that occurs after the beginning of the taxation year of a particular foreign affiliate of a relevant shareholder that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, by the particular foreign affiliate of a relevant shareholder, in respect of which a particular consideration (that was eligible property that was in existence at the time immediately before the status change time) was provided by the particular foreign affiliate, the particular foreign affiliate's proceeds from the particular disposition, are deemed to be the amount, if any, determined by the formula

$$A - (B + C)$$

where

A is the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined,

B is the lesser of

(i) the amount, if any, by which

(A) the fair market value, of the eligible property, immediately before the status change time in respect of the particular Canadian shareholder

exceeds

(B) the particular foreign affiliate's cost, of the eligible property, immediately before the particular disposition, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined, exceeds the particular foreign affiliate's cost of the eligible property immediately before the particular disposition, and

C is the lesser of

(i) the amount, if any, by which

(A) the particular foreign affiliate's cost, of the eligible property, immediately before the beginning of the taxation year of the particular foreign affiliate that included the status change time in respect of the particular Canadian shareholder

exceeds

(B) the fair market value of the eligible property immediately before the status change time in respect of the particular Canadian shareholder, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the particular disposition, as otherwise determined, exceeds the particular foreign affiliate's cost of the eligible property immediately before the particular disposition;

(*f*.93) if, at any time after the beginning of the taxation year of the particular foreign affiliate that includes the status change time in respect of the particular foreign affiliate in respect of the particular Canadian shareholder, the particular foreign affiliate disposes of a particular specified depreciable property, the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property are deemed to be the amount, if any, determined by the formula

$$A - (B + C)$$

where

A is the particular foreign affiliate's proceeds of disposition in respect of the disposition of the particular specified depreciable property, as otherwise determined,

B is the lesser of

(i) the amount, if any, by which

(A) the fair market value, of the particular specified depreciable property, immediately before the status change time in respect of the particular Canadian shareholder

exceeds

(B) the particular foreign affiliate's capital cost of the particular specified depreciable property, immediately before the disposition, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property, as otherwise determined, exceed the particular foreign affiliate's capital cost of the specified depreciable property at the time immediately before the time of the disposition, and

C is the lesser of

(i) the amount, if any, by which

(A) the particular foreign affiliate's capital cost of the particular specified depreciable property immediately before the beginning of the taxation year of the particular foreign affiliate that includes the status change time in respect of the particular Canadian shareholder

exceeds

(B) the fair market value of the particular specified depreciable property at the time immediately before the status change time in respect of the particular Canadian shareholder, and

(ii) the amount, if any, by which the particular foreign affiliate's proceeds from the disposition of the particular specified depreciable property, as otherwise determined, exceed the particular foreign affiliate's capital cost of the particular specified depreciable property, immediately before the disposition;

(*f*.94) for the purposes of paragraphs (*f*.5) and (*f*.91) to (*f*.93), if the relevant foreign affiliate referred to in paragraph (*f*.5) or the particular foreign affiliate referred to in any of paragraphs (*f*.91) to (*f*.93) (which relevant foreign affiliate or particular foreign affiliate, as the case may be, is referred to in this paragraph as the "specified foreign affiliate") has been wound up into another non-resident corporation (referred to in this paragraph as the "foreign parent corporation") or merged or combined with one or more other non-resident corporations to form one non-resident corporate entity (referred to in this paragraph as the "new foreign corporation"), the foreign parent corporation or the new foreign corporation, as the case may be, is deemed to be the same corporation as and a continuation of the specified foreign affiliate, if

(i) the surplus entitlement percentage of the particular corporation resident in Canada, immediately before the merger or combination or the winding-up, in respect of the specified foreign affiliate is not less than 90%, and

(ii) the surplus entitlement percentage of the particular corporation resident in Canada, immediately after the merger or combination or the winding-up, in respect of the foreign parent corporation or new foreign corporation, as the case may be, is not less than 90%;

(*g*) income earned, a loss incurred or a capital gain or captial loss realized, as the case may be, in a taxation year by a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year or to which the taxpayer is related throughout the taxation year, because of a fluctuation in the value of the currency of a country other than

Canada relative to the value of Canadian currency, is deemed to be nil if it is earned, incurred or realized in reference to any of the following sources:

(i) a debt obligation that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (which other foreign affiliate or other non-resident corporation is referred to in this paragraph as a "qualified foreign corporation"), or

(B) the particular affiliate by a qualified foreign corporation,

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or a qualified foreign corporation, or

(iii) the disposition to a qualified foreign corporation of a share of the capital stock of another qualified foreign corporation;

(*g*.01) any income, loss, capital gain or capital loss, derived by a foreign affiliate of a taxpayer under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the affiliate to reduce its risk (with respect to any source, any particular income, gain or loss determined in reference to which is deemed by paragraph (*g*) to be nil) of fluctuations in the value of currency, is, to the extent of the absolute value of the particular income, gain or loss, deemed to be nil;

(*g*.02) in applying subsection 39(2) for the purpose of this subdivision, the gains and losses of a foreign affiliate of a taxpayer in respect of excluded property is to be computed in respect of the taxpayer separately from the gains and losses of the affiliate in respect of property that is not excluded property;

(16) Paragraph 95(2)(i) of the Act is replaced by the following:

(*h*) paragraph (*h*.1) applies to a specified vendor in respect of a particular taxpayer resident in Canada (which specified vendor is referred to in this paragraph and paragraphs (*h*.1) and (*h*.2) as the "vendor") if

(i) the vendor disposes at any time of a property (which property is referred to in this paragraph and paragraphs (*h*.1) to (*h*.5) as the "specified property" and which time is referred to in this paragraph and paragraphs (*h*.1) to (*h*.5) as the "original disposition time" of the specified property) that, at that time, is not depreciable property, eligible capital property or an excluded property, of the vendor (or would not be excluded property of the vendor if the vendor were, at that time, a foreign affiliate of the particular taxpayer) to a person or partnership (referred to in paragraph (*h*.1) as the "purchaser") that is, immediately after that time, a specified purchaser in respect of the particular taxpayer, and

(ii) the vendor would, were this Act read without reference to paragraph (*h*.1), have a loss or allowable capital loss from the disposition of the specified property;

(*h*.1) if this paragraph applies to a vendor in respect of a disposition of specified property referred to in paragraph (*h*), the following rules apply:

(i) the vendor's proceeds from the disposition of the specified property are deemed to be an amount that is equal to the vendor's adjusted cost base of the specified property at the original disposition time,

(ii) the purchaser's cost of the specified property is deemed to be an amount that is equal to the fair market value of the specified property at the original disposition time,

(iii) the vendor's cost of a particular property that was received as consideration for the disposition of the specified property is deemed to be the fair market value of the particular property at the original disposition time,

(iv) the vendor that is a foreign affiliate of the particular taxpayer resident in Canada or a foreign affiliate of the particular taxpayer resident in Canada that is a member of a partnership that is the vendor (which vendor or foreign affiliate is referred to in this subparagraph as the "relevant foreign affiliate") is deemed to have an unadjusted suspended loss or capital loss in respect of the specified property disposed of, at the original disposition time, by the vendor that is equal to the amount, that is the loss or twice the amount of the allowable capital loss, as the case may be, that, but for the application of this paragraph, would have been realized by the relevant foreign affiliate in respect of that disposition, and

(v) notwithstanding subsection 40(3.3), subsection 40(3.4) does not apply to the vendor in respect of the disposition of the specified property;

(*h*.2) the relevant foreign affiliate referred to in paragraph (*h*.1) is deemed to have a loss or capital loss from the disposition of the specified property equal to the amount prescribed to be the adjusted suspended loss or capital loss in respect of the specified property and to have received from the government of a country an amount equal to the amount prescribed to be the adjusted allocable tax refund in respect of the adjusted suspended loss or capital loss in respect of the specified property at the earlier of

(i) the first time, after the original disposition time, that a specified purchaser in respect of the particular taxpayer (which specified purchaser is referred to in paragraphs (*h*.4) and (*h*.5) as the "current vendor") that holds, immediately before that first time, the specified property makes a triggering disposition of the specified property, and

(ii) the first time, after the original disposition time, that a specified purchaser in respect of the particular taxpayer (which specified purchaser is referred to in this subparagraph as the "current holder") that holds, immediately before that first time, the specified property ceases to be a specified purchaser in respect of the particular taxpayer otherwise than because of a specified discontinuance of the current holder;

(*h*.3) for the purposes of paragraphs (*h*.1), (*h*.2), (*h*.4) and (*h*.5) and subsection (3.5), a designated replacement property referred to in clause (*b*)(ii)(A), (B) or (C) of the definition "triggering disposition" in subsection (3.5) is deemed to be the specified property referred to in that clause;

(*h*.4) for the purposes of paragraphs (*h*.1) to (*h*.3) and (*h*.5) and subsection (3.5) if, at any time, part of a specified property (which specified property is referred to in this paragraph as the "initial specified property") is disposed of by a current vendor and the remaining part of the specified property is retained by the current vendor,

(i) the part (referred to in this paragraph as the "part interest") of the initial specified property disposed of, at that time, is deemed to be a specified property of the current vendor,

(ii) the portion of the unadjusted suspended loss or capital loss attributable to the part interest is deemed to be that proportion of the adjusted suspended loss or capital loss in respect of the whole of the initial specified property that the fair market value at that time of the part interest is of the fair market value at that time of the initial specified property,

(iii) the part (referred to in this paragraph as the "remaining interest") of the initial specified property not disposed of at that time is deemed to be a specified property of the current vendor that was disposed of at the original disposition time, and

(iv) the amount of loss or capital loss that would have been realized on the disposition of the remaining interest at the original disposition time is deemed to be the amount, if any, by which the unadjusted suspended loss or capital loss in respect of the initial specified property exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended loss or capital loss in respect of the part interest;

(*h*.5) for the purposes of paragraphs (*h*.1) to (*h*.4) and subsection (3.5), if a current vendor disposes, at any particular time, of the whole of a specified property (referred to in this paragraph as the "initial specified property") and as part of a transaction, or series of transactions or events, that includes the disposition of the initial specified property, a specified purchaser in respect of the particular taxpayer acquires a designated replacement property in respect of the initial specified property,

(i) the designated replacement property (referred to in this paragraph as the "remaining interest") is deemed to be a specified property of the current vendor that was disposed of at the original disposition time,

(ii) the unadjusted suspended loss or capital loss in respect of the remaining interest is deemed to be that proportion of the unadjusted suspended loss or capital loss in respect of the whole of the initial specified property (determined without reference to subparagraph (iii)) that the fair market value of the remaining interest, at the time it was acquired, is of the fair market value, at the particular time, of the initial specified property, and

(iii) the unadjusted suspended loss or capital loss in respect of the initial specified property is deemed to be the amount, if any, by which the unadjusted suspended loss or capital loss in respect of the initial specified property (determined without reference to this subparagraph) exceeds the amount determined by subparagraph (ii) to be the unadjusted suspended loss or capital loss in respect of the remaining interest;

(*i*) any gain or loss determined in accordance with subsection 39(2) of a foreign affiliate of a taxpayer is deemed to be a gain or loss, as the case may be, from the disposition of an excluded property if the gain or loss is

(i) derived from the settlement or extinguishment of a debt all or substantially all of the proceeds from which were used at all times to acquire excluded property or to earn income from an active business or for a combination of those uses, or

(ii) derived under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the affiliate to reduce its risk, with respect to a debt referred to in subparagraph (i), of fluctuations in the value of the currency in which the debt was denominated;

(17) Paragraph 95(2)(*k*) of the Act is replaced by the following:

(*j*.1) paragraph (*j*.2) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer and in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (*j*.2) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (*j*.2) as the "specified taxation year") if in the specified taxation year

(i) the operator carries on a business (referred to in this paragraph and paragraph (*j*.2) as a "foreign business"),

(ii) the foreign business includes the insuring of risks,

(iii) the foreign business is not, at any time, a taxable Canadian business,

(iv) the foreign business is

(A) an investment business, or

(B) a business whose activities include activities deemed by paragraph (*a*.2) or (*b*) to be a separate business, other than an active business, carried on by the affiliate, and

(v) in respect of the foreign business, the operator would, were it a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or a similar authority of a province;

(*j*.2) if this paragraph applies in respect of a specified taxation year of an operator, in computing the operator's income or loss from the foreign business for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

(i) the operator is deemed to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator, and

(ii) for the purposes of Part XIV of the Regulations,

(A) the operator is deemed to be required by law to report to, and to have been subject to the supervision of, the regulatory authority referred to in subparagraph (*j*.1)(v), and

(B) where the operator is a life insurer and the foreign business is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada;

(*k*) paragraph (*k*.1) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer and in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (*k*.1) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (*k*.1) as the "specified taxation year") if

(i) in the specified taxation year, the operator carries on a business (referred to in this paragraph and, subject to paragraph (*k*.6), in paragraph (*k*.1), as a "foreign business"),

(ii) the foreign business is not, at any time in the specified taxation year, a taxable Canadian business,

(iii) in the specified taxation year, the foreign business is

(A) an investment business,

(B) a business whose activities include activities deemed by any of paragraphs (*a*.1) to (*b*) to be a separate business, other than an active business, carried on by the affiliate, or

(C) a business the income from which is included by paragraph (*l*) in computing the affiliate's income from property for the specified taxation year, and

(iv) in the taxation year of the affiliate or the fiscal period of the partnership that includes the day that is immediately before the beginning of the specified taxation year,

(A) the affiliate or partnership carried on the foreign business,

(B) the foreign business was not, at any time, a taxable Canadian business, and

(C) the foreign business was not described in any of clauses (iii)(A) to (C);

(*k*.1) if this paragraph applies in respect of a specified taxation year of an operator, in computing the operator's income or loss from the foreign business, and in computing the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

(i) the operator is deemed

(A) to have begun to carry on the foreign business in Canada at the beginning of the specified taxation year, and

(B) to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator,

(ii) where, in respect of the foreign business, the operator would, if it were a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or a similar authority of a province,

(A) the operator is deemed to be required by law to report to, and to have been subject to the supervision of, such regulating authority, and

(B) if the operator is a life insurer and the foreign business is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada,

(iii) paragraphs 138(11.91)(*c*) to (*e*) apply to the operator for the specified taxation year in respect of the foreign business as if

(A) the operator were the insurer referred to in subsection 138(11.91),

(B) the specified taxation year of the operator were the particular taxation year of the insurer referred to in that subsection,

(C) the foreign business of the operator were the business of the insurer referred to in that subsection, and

(D) the reference in paragraph 138(11.91)(*e*) to "property owned by it at that time that is designated insurance property in respect of the business" were read as a reference to "property owned or held by it at that time that is used or held by it in the particular taxation year in the course of carrying on the insurance business", and

(iv) if a particular property is deemed, because of the application of subparagraph (iii) and paragraph 138(11.91)(*e*), to have been disposed of in the preceding taxation year by the operator (which disposition is referred to in this subparagraph as a "particular disposition" of the particular property),

(A) the amount of the foreign affiliate's income, gain or loss (which income, gain or loss is referred to in this subparagraph as the "deferred amount") derived from the operator's income, gain or loss from the particular disposition of the particular property

(I) is to be included in computing the foreign affiliate's income, gain or loss for its taxation year that includes the last day of the operator's taxation year or fiscal period in which the particular property is disposed of by the operator in a disposition that is not the particular disposition, and

(II) is not to be included in computing the foreign affiliate's income, gain or loss for its taxation year that includes the last day of the operator's taxation year that includes the time of the particular disposition of the particular property, and

(B) the portion of the income taxes paid by the foreign affiliate to, or recovered by the foreign affiliate from, the government of a country other than Canada that may reasonably be considered to relate to the deferred amount is not to be included in determining income taxes paid to or recovered in respect of any other income, gain or loss of the foreign affiliate;

(*k*.2) paragraph (*k*.3) applies in respect of a particular taxation year of a foreign affiliate of a taxpayer or in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (*k*.3) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (*k*.3) as the "specified taxation year") if

(i) in the taxation year of the affiliate, or fiscal period of the partnership, (which taxation year or fiscal period is referred to in this paragraph and paragraph (*k*.3) as "the preceding taxation year") that includes the day immediately before the beginning of the specified taxation year, the affiliate or partnership carried on a business (which is referred to in this paragraph and, subject to paragraph (*k*.6), in paragraph (*k*.3), as a "foreign business"),

(ii) the foreign business was not, at any time in the preceding taxation year, a taxable Canadian business,

(iii) in the preceding taxation year, the foreign business was

(A) an investment business,

(B) a business whose activities included activities deemed by any of paragraphs (*a*.1) to (*b*) to be a separate business, other than an active business, carried on by the affiliate, or

(C) a business the income from which is included by paragraph (*l*) in computing the affiliate's income from property for the preceding taxation year, and

(iv) either

(A) at any time in the specified taxation year, the operator carries on the foreign business and

(I) the foreign business is an active business that is not a taxable Canadian business, or

(II) all or substantially all of the fair market value of the property of the operator used or held by the operator in the course of carrying on the foreign business is attributable to property of the operator that is excluded property, or

(B) at no time in the specified taxation year does the operator carry on the foreign business;

(*k*.3) if this paragraph applies in respect of a specified taxation year of an operator, in computing the operator's income or loss from the foreign business, and in computing the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the preceding taxation year or fiscal period referred to in paragraph (*k*.2) and for the specified taxation year of the operator and the operator's subsequent taxation years or fiscal periods

(i) the operator is deemed to have ceased to carry on the foreign business in Canada at the beginning of the specified taxation year,

(ii) subject to subparagraph (iii), paragraphs 138(11.91)(*c*) to (*e*) apply to the operator for the specified taxation year in respect of the foreign business as if

(A) the operator were the insurer referred to in subsection 138(11.91),

(B) the specified taxation year of the operator were the particular taxation year of the insurer referred to in that subsection,

(C) the foreign business of the operator were the business of the insurer referred to in that subsection,

(D) the reference in paragraph 138(11.91)(*e*) to "property owned by it at that time that is designated insurance property in respect of the business" were read as a reference to "property owned or held by it at that time that is used or held by it in the particular taxation year in the course of carrying on the insurance business", and

(iii) where the taxpayer so elects, in prescribed manner and within the prescribed time, to have this subparagraph apply in respect of each property that is deemed, because of the application of subparagraph (ii) and paragraph 138(11.91)(*e*), to have been disposed of in the specified taxation year by the operator (each such property referred to in this subparagraph as a "particular property" and each such disposition of a particular property referred to in this subparagraph as a "particular disposition" of the particular property)

(A) the amount of the foreign affiliate's income, gain or loss (which income, gain or loss is referred to in this subparagraph as the "deferred amount") derived from the operator's income, gain or loss from a particular disposition of a particular property

(I) is to be included in computing the foreign affiliate's foreign accrual property income in respect of the taxpayer for the foreign affiliate's taxation year that includes the last day of the operator's taxation year or fiscal period in which the particular property is disposed of by the operator in a disposition that is not the particular disposition, and

(II) is not to be included in computing the foreign affiliate's foreign accrual property income in respect of the taxpayer for the foreign affiliate's taxation year that includes the last day of the operator's taxation year or fiscal period that includes the time of the particular disposition of the particular property, and

(B) the portion of the income taxes paid by the foreign affiliate to, or recovered by the foreign affiliate from, the government of a country other than Canada that may reasonably be considered to relate to the deferred amount is not to be included in determining income taxes paid to or recovered in respect of any other income, gain or loss of the foreign affiliate;

(*k*.4) if at any time a foreign affiliate of a taxpayer resident in Canada, or a partnership at the end of the fiscal period of which includes that time a foreign affiliate of a taxpayer resident in Canada is a member of the partnership, (which foreign affiliate or partnership is referred to in this paragraph as the "operator"), carries on a business both outside Canada and in Canada and income from the particular part of that business that is carried on in Canada is income from a taxable Canadian business, the following rules apply for the purposes of paragraphs (*k*) to (*k*.3):

(i) the particular part of the business is deemed to be, at that time, a separate business,

(ii) the assets used, or held, at that time primarily in the course of carrying on the particular part of the business are deemed to be, at that time, used or held in the course of carrying on the separate business,

(iii) any liability incurred, and any reserve established, at that time in the course of carrying on the particular part of the business are deemed to be, at that time, incurred or established in the course of carrying on the separate business, and

(iv) the transactions conducted at that time in the particular part of the business are deemed to be transactions conducted, at that time, in the separate business;

(*k*.5) paragraph (*k*.6) applies for the purposes of paragraphs (*k*.1) and (*k*.3) in respect of a particular business of an operator if

(i) the particular business is the operator's foreign business for the specified taxation year described in paragraph (*k*) or for the preceding taxation year described in subparagraph (*k*.2)(i), and

(ii) the activities of the particular business for that specified or preceding taxation year include particular activities deemed by any of paragraphs (*a*.1) to (*b*) to be a separate business, other than an active business, carried on by the foreign affiliate for that specified or preceding taxation year and the particular activities were not all the activities of the particular business in that specified or preceding taxation year;

(*k*.6) if this paragraph applies in respect of the particular business of the operator, in applying paragraphs (*k*.1) and (*k*.3),

(i) that part of the particular business that consists of activities deemed by any of paragraphs (*a*.1) to (*b*) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (*k*.1) or (*k*.3), of the operator, is deemed to be the operator's foreign business carried on in that taxation year or fiscal period,

(ii) the assets used or held by the operator primarily in the course of carrying on activities deemed by any of paragraphs (*a*.1) to (*b*) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (*k*) or (*k*.2), of the operator, are deemed to be assets used or held by the operator in the course of carrying on the foreign business in that taxation year or fiscal period,

(iii) the portion of the liabilities incurred, and the portion of the reserves established, in the course of carrying onactivities deemed by any of paragraphs (*a*.1) to (*b*) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (*k*) or (*k*.2), of the operator, are deemed to be liabilities incurred and reserves established in the course of carrying on the foreign business in that taxation year or fiscal period, and

(iv) subject to subparagraphs (ii) and (iii), the transactions conducted in the course of carrying on activities deemed by any of paragraphs (*a*.1) to (*b*) to be a separate business, other than an active business, carried on by the foreign affiliate for a taxation year or for a fiscal period, referred to in paragraph (*k*) or (*k*.2), of the operator, are, to the extent that those transactions relate to those activities, deemed to be transactions conducted in the course of carrying on the foreign business in that taxation year or fiscal period;

(*k*.7) if a person is (or is deemed by this paragraph to be) a member of a partnership and that partnership is a member of another partnership,

(i) in applying paragraphs (*a*.1) to (*b*), (*j*.1) to (*k*.6) and (*l*) and the definition "taxable Canadian business" in subsection (1), the person is deemed to be a member of the other partnership, and

(ii) in applying the definition "taxable Canadian business" in subsection (1), the person's share of the income or loss of the other partnership is deemed to be equal to the portion of that income or loss to which the person is directly or indirectly entitled;

(18) Subparagraph 95(2)(*l*)(iii) of the Act is replaced by the following:

(iii) the business is carried on by the affiliate as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(A) of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

(B) of the country in which the business is principally carried on, or

(C) if the affiliate is related to a non-resident corporation, of the country under whose laws that non-resident corporation is governed and any of exists, was (unless that non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

(19) Subsection 95(2) of the Act is amended by striking out the word "and" at the end of paragraph (*l*) and by adding the following after paragraph (*m*):

(*n*) in applying paragraphs (2)(*a*) and (*g*) and subsections (2.2) and (2.21) and in applying paragraph (*d*) of the definition "exempt earnings", and paragraph (*c*) of the definition "exempt loss", in subsection 5907(1) of the Regulations, a non-resident corporation is deemed to be, at any time, a foreign affiliate of a particular corporation resident in Canada, and a foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest, if at that time

(i) the non-resident corporation is a foreign affiliate of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(*b*)) to the particular corporation, and

(ii) that other corporation has a qualifying interest in respect of the non-resident corporation;

(*o*) a particular person is a qualifying member of a partnership at a particular time if, at that time, the particular person is a member of the partnership and

(i) throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership, the particular person is, on a regular, continuous and substantial basis

(A) actively engaged in those activities, of the principal business of the partnership carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of that principal business, or

(B) actively engaged in those activities, of a particular business carried on in that fiscal period by the particular person (otherwise than as a member of a partnership) that is similar to the principal business carried on in that fiscal period by the partnership, that are other than activities connected with the provision of or the acquisition of funds required for the operation of the particular business, or

(ii) throughout the period, in the fiscal period of the partnership that includes the particular time, during which the member was a member of the partnership

(A) the total of the fair market value of all partnership interests in the partnership owned by the particular person was equal to or greater than 1% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership, and

(B) the total of the fair market value of all partnership interests in the partnership owned by the particular person or persons (other than trusts) related to the particular person was equal to or greater than 10% of the total of the fair market value of all partnership interests in the partnership owned by all members of the partnership;

(*p*) a particular person is a qualifying shareholder of a corporation at any time if throughout the period, in the taxation year of the corporation that includes that time, during which the particular person was a shareholder of the corporation

(i) the particular person owned 1% or more of the issued and outstanding shares (having full voting rights under all circumstances) in the capital of the corporation,

(ii) the particular person, or the particular person and persons (other than trusts) related to the particular person, owned 10% or more of the issued and outstanding shares (having full voting rights under all circumstances) in the capital of the corporation,

(iii) the total of the fair market value of all the issued and outstanding shares of the corporation owned by the particular person is 1% or more of the total fair market value of all the issued and outstanding shares of the corporation, and

(iv) the total of the fair market value of all the issued and outstanding shares of the corporation owned by the particular person or by persons (other than trusts) related to the particular person is 10% or more of the total fair market value of all the issued and outstanding shares of the corporation;

(*q*) in applying paragraphs (*o*) and (*p*)

(i) where interests in a partnership or shares of a corporation (which interests or shares are referred to in this subparagraph as "equity interests") are, at any time, property of a partnership or are deemed under this paragraph to be, at any time, property of the partnership, the equity interests are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of the equity interests that

(A) the fair market value at that time of the member's partnership interest in the partnership

is of

(B) the fair market value at that time of all members' partnership interests in the partnership, and

(ii) where interests in a partnership or shares of a corporation (which interests or shares are referred to in this subparagraph as "equity interests") are, at any time, property of a non-discretionary trust (within the meaning assigned by subsection 17(15)) or are deemed under this paragraph to be, at any time, property of such a non-discretionary trust, the equity interests are deemed to be owned at that time by each beneficiary under that trust in a proportion equal to that proportion of the equity interests that

(A) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(B) the fair market value at that time of all beneficial interests in the trust;

(*r*) in applying paragraph (*a*), a partnership is deemed to be, at any time, a partnership of which a foreign affiliate - of a particular corporation resident in Canada and in respect of which foreign affiliate the particular corporation has a qualifying interest - is a qualifying member, if at that time

(i) a particular foreign affiliate - of another corporation that is resident in Canada and that is related (otherwise than because of a right referred to in paragraph 251(5)(*b*)) to the particular corporation - is a member of the partnership,

(ii) that other corporation has a qualifying interest in respect of the particular foreign affiliate, and

(iii) the particular foreign affiliate is a qualifying member of the particular partnership;

(*s*) in applying the definition "investment business" in subsection (1), a particular corporation is, at any time, a designated corporation in respect of a foreign affiliate of a taxpayer if, at that time,

(i) a qualifying shareholder of the foreign affiliate or a person related to such a qualifying shareholder is a qualifying shareholder of the particular corporation,

(ii) the particular corporation

(A) is controlled by a qualifying shareholder of the foreign affiliate, or

(B) would be controlled by a particular qualifying shareholder of the foreign affiliate if the particular qualifying shareholder of the foreign affiliate owned each share of the capital stock of the particular corporation that is owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate, and

(iii) the total of all amounts each of which is the fair market value of a share of the capital stock of the particular corporation owned by a qualifying shareholder of the foreign affiliate or by a person related to a qualifying shareholder of the foreign affiliate is greater than 50% of the total fair market value of all the issued and outstanding shares of the capital stock of the particular corporation;

(*t*) in applying the definition "investment business" in subsection (1), a particular partnership is, at any time, a designated partnership in respect of a foreign affiliate of a taxpayer if, at that time,

(i) the foreign affiliate or a person related to the foreign affiliate is a qualifying member of the particular partnership, and

(ii) the total of all amounts each of which is the fair market value of a partnership interest in the particular partnership held by the foreign affiliate, by a person related to the foreign affiliate or by a qualifying member of the operating partnership (described in that definition) is greater than 50% of the total fair market value of all partnership interests in the particular partnership owned by all members of the particular partnership;

(*u*) in applying the definition "controlled foreign affiliate" in subsection (1), shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, another corporation are deemed to be, at that time, owned by, or property of, as the case may be, each shareholder of the other corporation in the proportion that

(i) the fair market value at that time of the shares of the capital stock of the other corporation that, at that time, are owned by, or are property of, the shareholder

is of

(ii) the fair market value at that time of all the issued and outstanding shares of the capital stock of the other corporation;

(*v*) in applying the definition "controlled foreign affiliate" in subsection (1), shares of the capital stock of a corporation that are, or are deemed by this subsection to be, at any time, property of a partnership, are deemed to be, at that time, owned by, or property of, as the case may be, each member of the partnership in the proportion that

(i) the fair market value at that time of the member's partnership interest in the partnership

is of

(ii) the fair market value at that time of all partnership interests in the partnership;

(*w*) in applying the definition "controlled foreign affiliate" in subsection (1), shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, a non-discretionary trust (within the meaning assigned by subsection 17(15)) other than an exempt trust (within the meaning assigned by subsection (3.2)) are deemed to be, at that time, owned by, or property of, as the case may be, each beneficiary of the trust in the proportion that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust;

(*x*) in applying the definition "controlled foreign affiliate" in subsection (1), all of the shares of the capital stock of a corporation that are at any time owned by, or that are deemed by this subsection to be at any time owned by, a particular trust (other than an exempt trust within the meaning assigned by subsection (3.2) or a non-discretionary trust within the meaning assigned by subsection 17(15)) are deemed to be, at that time, owned by, or property of, as the case may be,

(i) each beneficiary of the particular trust at that time, and

(ii) each settlor (within the meaning assigned by subsection 17(15)) in respect of the particular trust at that time; and

(*y*) in paragraphs (*c*.3), (*f*.5) and (*h*.2) and clauses (*k*.1)(iv)(B) and (*k*.3)(iii)(B), the expression "government of a country" includes the government of a province, state or other political subdivision of that country.

(20) Paragraph 95(2.1)(*c*) of the Act is replaced by:

(*c*) the affiliate entered into the agreements

(i) in the course of carrying on, principally with persons with whom the affiliate deals at arm's length, a business (other than a life insurance business) principally carried on in the country (other than Canada) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) in the course of a life insurance business carried on by the affiliate principally in a country other than Canada and principally with persons with whom the affiliate deals at arm's length if

(A) that country is

(I) the country in which the business is principally carried on, or

(II) the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(B) the business activities of the affiliate are regulated in each of the countries described in clause (A); and

(21) The portion of subsection 95(2.2) of the Act before paragraph (*a*) is replaced by the following:

Rule for subsection (2)

(2.2) For the purpose of subsection (2), other than paragraphs (2)(*f*) and (*f*.1),

(22) Paragraph 95(2.2)(*b*) of the Act is replaced by the following:

(*b*) a non-resident corporation that was not related to a taxpayer or to a taxpayer and a foreign affiliate of the taxpayer, as the case may be, throughout a particular taxation year is deemed to be related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer throughout that year if

(i) a person has, in that year, acquired or disposed of shares of the non-resident corporation or any other corporation and, because of that acquisition or disposition, the non-resident corporation became (or would have become, if paragraph 251(5)(*b*) did not apply to rights contained in the agreement under which the person acquired the shares), or ceased to be, a non-resident corporation that was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer, and

(ii) at the beginning, or at the end, of that year, the non-resident corporation was related to the taxpayer or to the taxpayer and the foreign affiliate of the taxpayer.

(23) Section 95 of the Act is amended by adding the following after subsection (2.2):

Rule re subsection (2.2)

(2.21) Subsection (2.2) does not apply for the purpose of paragraph (2)(*a*) in respect of any income or loss referred to in that paragraph, of a particular foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the taxation year of that particular affiliate or to which the taxpayer is related throughout the taxation year, to the extent that that income or loss relates to a transaction or event

(*a*) that occurred before that particular affiliate became, as determined without reference to subsection (2.2), a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest or to which the taxpayer is related; or

(*b*) that occurred before a non-resident corporation (other than that particular affiliate), or a foreign affiliate of the taxpayer (other than that particular affiliate), referred to in paragraph (2)(*a*) became, as determined without reference to subsection (2.2)

(i) a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest, or

(ii) related to the taxpayer and to that particular affiliate.

(24) Paragraph 95(2.3)(*b*) of the Act is replaced by the following:

(*b*) the sale or exchange was made by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length, if

(i) the business is principally carried on in the country (other than Canada) under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) the affiliate is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities and the activities of the business are regulated

(A) under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and under the laws of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(B) under the laws of the country (other than Canada) in which the business is principally carried on, or

(C) under the laws of the country in which a particular corporation related to the affiliate is governed and any of exists, was (unless the particular corporation was continued in any jurisdiction) formed or organized, or was last continued, where those laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union; and

(25) Paragraph 95(2.4)(*a*) of the Act is replaced by the following:

(*a*) the income is derived by the affiliate in the course of a business conducted principally with persons with whom the affiliate deals at arm's length carried on by it as a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, the activities of which are regulated under the laws

(i) of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(ii) of the country in which the business is principally carried on, or

(iii) if the affiliate is related to a corporation, of the country under the laws of which that related corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

(26) Section 95 of the Act is amended by adding the following after subsection (2.4):

Exception re paragraph (2)(*a*.3)

(2.41) Paragraph (2)(*a*.3) does not apply to a foreign affiliate of a taxpayer resident in Canada in respect of the affiliate's income for a taxation year derived, directly or indirectly, from indebtedness of persons resident in Canada or from indebtedness in respect of businesses carried on in Canada (referred to in this subsection as the "Canadian indebtedness") if

(*a*) the taxpayer is, at the end of the affiliate's taxation year

(i) a life insurance corporation resident in Canada, the business activities of which are subject by law to the supervision of the Superintendent of Financial Institutions or a similar authority of a province, or

(ii) a corporation resident in Canada that is a subsidiary controlled corporation of a corporation described in subparagraph (i);

(*b*) the Canadian indebtedness is used or held by the affiliate, throughout the period in the taxation year that that indebtedness was used or held by the affiliate, in the course of carrying on a business (referred to in this subsection as the "foreign life insurance business") that is a life insurance business carried on outside Canada (other than a business deemed by paragraph (2)(*a*.2) to be a separate business other than an active business), the activities of which are regulated

(i) in the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and

(ii) in the country, if any, in which the business is principally carried on;

(*c*) more than 90% of the gross premium revenue of the affiliate for the taxation year in respect of the foreign life insurance business was derived from the insurance or reinsurance of risks (net of reinsurance ceded) in respect of persons

(i) that were non-resident at the time that the policies in respect of those risks were issued or effected, and

(ii) that were at that time dealing at arm's length with the affiliate, the taxpayer and all persons that were related at that time to the affiliate or the taxpayer; and

(*d*) it is reasonable to conclude that the affiliate used or held the Canadian indebtedness

(i) to fund a liability or reserve of the foreign life insurance business, or

(ii) as capital that can reasonably be considered to have been required for the foreign life insurance business.

(27) Paragraph (*c*) of the definition "indebtedness" in subsection 95(2.5) of the Act is replaced by the following:

(*c*) the agreements are entered into by the non-resident corporation in the course of a business conducted principally with persons with whom the non-resident corporation deals at arm's length, if

(i) the business is principally carried on in the country (other than Canada) under whose laws the non-resident corporation is governed and any of exists, was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued, or

(ii) the non-resident corporation is a foreign affiliate of the person and

(A) the person is a taxpayer described in paragraph (2.3)(*a*),

(B) the non-resident corporation is a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities or commodities, and

(C) the activities of the business are regulated

(I) under the laws of the country under whose laws the non-resident corporation is governed and any of exists, was (unless the non-resident corporation was continued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment (as defined by regulation) in that country,

(II) under the laws of the country (other than Canada) in which the business is principally carried, or

(III) under the laws of the country under whose laws a corporation related to the non-resident corporation is governed and any of exists, was (unless that related corporation was continued in any jurisdiction) formed or organized, or was last continued, where those laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

(28) Subsection 95(3) of the Act is amended by striking out the word "or" at the end of paragraph (*a*) and by adding the following after paragraph (*b*):

(*c*) the transmission of electronic signals or electricity along a transmission system located outside Canada; or

(*d*) the manufacturing or processing outside Canada, in accordance with the taxpayer's specifications and under a contract between the taxpayer and the affiliate, of tangible property that is owned by the taxpayer if the property resulting from the manufacturing or processing is used or held by the taxpayer in the ordinary course of the taxpayer's business carried on in Canada.

(29) Section 95 of the Act is amended by adding the following after subsection (3):

Designated property — subparagraph (2)(*a*.1)(i)

(3.1) Designated property referred to in subparagraph (2)(*a*.1)(i) is property that is described in the portion of paragraph (2)(*a*.1) that is before subparagraph (i) that is

(*a*) property that

(i) was - in the course of carrying on a business in Canada - manufactured, produced, grown, extracted or processed in Canada by the taxpayer, or by a person with whom the taxpayer does not deal at arm's length, or

(ii) was - in the course of a business carried on by a foreign affiliate of the taxpayer outside Canada - manufactured or processed from tangible property that, at the time of the manufacturing or processing, was owned by the taxpayer or by a person related to the taxpayer and used or held by the owner in the course of carrying on a business in Canada, if the manufacturing or processing was in accordance with the specifications of the owner of the tangible property and under a contract between that owner and that foreign affiliate;

(*b*) property that was acquired, in the course of carrying on a business in Canada, by a purchaser from a vendor if

(i) the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length, and

(ii) the vendor is a person

(A) with whom the taxpayer deals at arm's length,

(B) who is not a foreign affiliate of the taxpayer, and

(C) who is not a foreign affiliate of a person resident in Canada with whom the taxpayer does not deal at arm's length; or

(*c*) property that was acquired by a purchaser from a vendor if

(i) the purchaser is the taxpayer or is a person resident in Canada with whom the taxpayer does not deal at arm's length,

(ii) the vendor is a foreign affiliate of

(A) the taxpayer, or

(B) a person resident in Canada with whom the taxpayer does not deal at arm's length, and

(iii) that property was manufactured, produced, grown, extracted or processed in the country under whose laws the vendor is governed and any of exists, was (unless the vendor was continued in any jurisdiction) formed or organized, or was last continued and in which the vendor's business is principally carried on.

Definitions

(3.2) The following definitions apply for the purposes of this subsection and paragraphs (2)(*c*.1) to (*c*.6), (*e*.2) to (*e*.5) and (*f*.3) to (*f*.7) and subsections (3.3) to (3.6).

"dividend-like redemption"
« rachat de la nature d'un dividende »

"dividend-like redemption", of a share of the capital stock of a foreign affiliate (referred to in this definition as the "issuing foreign affiliate") of a corporation resident in Canada, means a redemption, an acquisition or a cancellation (in this definition referred to as the "redemption") of the share if

(*a*) the share is (or would, if held by a foreign affiliate of the corporation resident in Canada, be) excluded property of another foreign affiliate of the corporation resident in Canada that, immediately before the redemption, held the share; and

(*b*) the surplus entitlement percentage of the corporation resident in Canada, in respect of the issuing foreign affiliate, immediately before the redemption, is equal to the surplus entitlement percentage of the corporation resident in Canada, in respect of the issuing foreign affiliate, immediately after the redemption.

"eligible trust"
« fiducie admissible »

"eligible trust", at any time, means a trust other than

(*a*) a trust created or maintained for charitable purposes;

(*b*) a trust governed by an employee benefit plan;

(*c*) a trust described in paragraph (*a*.1) of the definition "trust" in subsection 108(1);

(*d*) a trust governed by a salary deferral arrangement;

(*e*) a trust operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits; or

(*f*) a trust that at or before that time was a personal trust.

"exempt trust"
« fiducie exonérée »

"exempt trust", at a particular time in respect of a taxpayer resident in Canada, means a trust that, at that time, is a trust under which the interest of each beneficiary (in this definition determined without reference to subsection 248(25)) under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

(*a*) the trust is an eligible trust;

(*b*) there are at least 150 beneficiaries each of whom holds a specified fixed interest in the trust with a fair market value of at least $500; and

(*c*) the total of all amounts each of which is the fair market value of an interest as a beneficiary under the trust held by a specified purchaser in respect of the taxpayer resident in Canada is not more than 10% of the total fair market value of all interests as a beneficiary under the trust.

"participating interest"
« participation déterminée »

"participating interest", in an entity, means

(*a*) if the entity is a corporation, a share of the capital stock of the corporation;

(*b*) if the entity is a trust, an interest as a beneficiary under the trust;

(*c*) if the entity is a partnership, a partnership interest in the partnership; and (*d*) a property that is, under a contract, in equity or otherwise, either immediately or in the future, and absolutely or contingently, convertible into, exchangeable for, or a right to acquire, directly or indirectly,

(i) a share or interest described in any of paragraphs (*a*) to (*c*), or

(ii) a property (other than money) the fair market value of which is determined primarily by reference to the fair market value of those shares or interests.

"specified fixed interest"
« participation fixe désignée »

"specified fixed interest", at a particular time in a trust, means a capital interest in the trust if

(*a*) the interest includes, at the particular time, a right of the interest holder as a beneficiary under the trust to receive, at or after the particular time and directly from the trust, income or capital of the trust;

(*b*) the interest was acquired, at or before the particular time, from the trust by any interest holder for consideration equal to its fair market value at the time of the acquisition; and

(*c*) no right of the interest holder as a beneficiary under the trust to any income or capital of the trust may cease to be a right of the interest holder otherwise than because of a disposition of the interest for consideration equal to the fair market value of the interest at the time of disposition or because of the disposition of the interest as a gift.

"specified purchaser"
« acheteur déterminé »

"specified purchaser", at any time in respect of a particular corporation resident in Canada, means a person or partnership that is, at that time,

(*a*) the particular corporation;

(*b*) a taxpayer resident in Canada with which the particular corporation does not deal at arm's length;

(*c*) a foreign affiliate of a person described in paragraph (*a*) or (*b*);

(*d*) a non-resident person with which a person described in any of paragraphs (*a*) to (*c*) does not deal at arm's length;

(*e*) a trust (other than an exempt trust) in which a person or partnership described in any of paragraphs (*a*) to (*d*) and (*f*) is beneficially interested; or

(*f*) a partnership in which a person or partnership described in any of paragraphs (*a*) to (*e*) has, directly or indirectly in any manner whatever, a partnership interest.

"specified vendor"
« vendeur déterminé »

"specified vendor", at any time in respect of a particular corporation resident in Canada, means a person or partnership that is, at that time,

(*a*) a foreign affiliate of the particular corporation;

(*b*) a foreign affiliate of a partnership of which the particular corporation is a member;

(*c*) a partnership a member of which is a person described in paragraph (*a*) or (*b*); or

(*d*) a partnership in which a person or partnership described in any of paragraphs (*a*) to (*c*) has, directly or indirectly in any manner whatever, a partnership interest.

Definitions for paragraphs (2)(*c*.1) to (*c*.6)

(3.3) The following definitions apply for the purposes of this subsection and paragraphs (2)(*c*.1) to (*c*.6).

"contributed property"
« bien d'apport »

"contributed property" means a property

(*a*) that was held by the disposed foreign affiliate at the original disposition time, and was held by a person or partnership that was not a specified purchaser in respect of the particular corporation resident in Canada immediately after a transaction or an event that is, or a series of transactions or events that includes,

(i) a particular disposition described in clause (*a*)(i)(A) or (ii)(B) of the definition "triggering disposition",

(ii) the dissolution, winding-up, or cessation of the existence, described in paragraph (*a*) of the definition "specified discontinuance", or

(iii) a merger or combination described in paragraph (*b*) of the definition "specified discontinuance"; and

(*b*) for which it is reasonable to conclude that one of the main reasons for holding the property at the original disposition time was

(i) to avoid the disqualification of the particular disposition as a triggering disposition, or

(ii) to avoid the characterization of a particular dissolution, winding-up, or cessation of the existence, of a specified purchaser in respect of a particular corporation resident in Canada as a specified discontinuance.

"specified discontinuance"
« discontinuation déterminée »

"specified discontinuance", of a current holder in respect of a particular corporation resident in Canada, means

(*a*) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a person or partnership that is a specified purchaser, in respect of the particular corporation resident in Canada,

(i) holds the specified share, or

(ii) holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate;

(*b*) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation resident in Canada

(i) holds the specified share, or

(ii) holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate; or

(*c*) a disposition of a participating interest in the current holder if, in the course of a transaction or an event that is, or a series of transactions or events that includes, the disposition of the participating interest, the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the interest in the specified share) becomes property of a person or partnership that is a specified purchaser in respect of the particular corporation resident in Canada.

"triggering disposition"
« disposition de déclenchement »

"triggering disposition", of a specified share in respect of a particular corporation resident in Canada, means the first disposition, after the original disposition time, of the specified share to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular corporation resident in Canada, but does not include

(*a*) a disposition of the specified share in respect of the particular corporation resident in Canada that arises in the course of

(i) a dissolution, winding-up, or cessation of the existence, of

(A) the disposed foreign affiliate if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation resident in Canada holds property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate, or

(B) a current holder in respect of the particular corporation resident in Canada if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation resident in Canada holds the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the right to or interest in the specified share), or

(ii) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation resident in Canada holds

(A) the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the right to or interest in the specified share), or

(B) property that, immediately before the commencement of the transaction or event or of the series, was property (or property substituted for such property) of the disposed foreign affiliate that, immediately before that commencement, had a total fair market value that was greater than 50% of the total fair market value, immediately before that commencement, of all of the property (other than contributed property) of the disposed foreign affiliate;

(*b*) a disposition of the specified share in respect of the particular corporation resident in Canada that is part of a series of transactions or events that includes

(i) the disposition of the specified share to a person or partnership that is not a specified purchaser in respect of the particular corporation resident in Canada, and

(ii) the acquisition, by a specified purchaser in respect of the particular corporation resident in Canada, of

(A) the specified share (or any portion of the specified share) or a right to, or an interest in, the specified share (or any portion of the right to or interest in the specified share),

(B) a share, a right to a share, or a right to acquire a share (which share or right is referred to in this subparagraph as a "substituted share") of the same or a substantially similar class of shares of the capital stock of the disposed foreign affiliate as the specified share or a substituted share, or

(C) a property the fair market value of which is determined primarily by reference to property that is the specified share (or a substituted share) or to property that, at the original disposition time, was property (or property substituted for it) of the disposed foreign affiliate, or to any combination of those properties; or

(*c*) a particular disposition of the specified share in respect of the particular corporation resident in Canada if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the particular disposition

(i) a specified purchaser in respect of the particular corporation resident in Canada holds property (other than contributed property) the fair market value of which is derived primarily from property that was, immediately before the original disposition time,

(A) property of the disposed foreign affiliate,

(B) property from which property of the disposed foreign affiliate primarily derived its fair market value,

(C) properties substituted for properties described in clause (A) or (B), or

(D) any combination of properties described in any of clauses (A) to (C), and

(ii) the fair market value of the properties described in subparagraph (i) is greater than 50% of the fair market value, immediately before the original disposition time, of all of the property of the disposed foreign affiliate.

Definitions for paragraphs (2)(*f*.3) to (*f*.9)

(3.4) The following definitions apply for the purposes of this subsection and paragraphs (2)(*f*.3) to (*f*.9).

"specified discontinuance" ***« discontinuation déterminée »***

"specified discontinuance", of a current holder described in paragraph (2)(*f*.5), means

(*a*) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser, in respect of the particular corporation, holds the specified property;

(*b*) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a person or partnership that is a specified purchaser, in respect of the particular corporation, holds the specified property; or

(*c*) a disposition of a participating interest in the current holder if, in the course of a transaction or an event that is, or a series of transactions or events that includes, the disposition of the participating interest, the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the specified property) becomes property of a specified purchaser in respect of the particular corporation.

"triggering disposition"
« disposition de déclenchement »

"triggering disposition", of a specified property in respect of a particular corporation resident in Canada, means the first disposition, after the original disposition time, of the specified property to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular corporation resident in Canada, but does not include

(*a*) a disposition of the specified property in respect of the particular corporation resident in Canada that occurs in the course of

(i) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular corporation holds the specified property, or

(ii) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular corporation holds the specified property; or

(*b*) a disposition of the specified property in respect of the particular corporation resident in Canada that is part of a series of transactions or events that includes

(i) the disposition of the specified property to a person or partnership that is not a specified purchaser in respect of the particular corporation resident in Canada, and

(ii) the acquisition, by a specified purchaser in respect of the particular corporation resident in Canada, of

(A) the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the right to or interest in the specified property) (which right, interest or portion is referred to for the purposes of paragraphs (2)(*f*.7) and (*f*.9) as a "designated replacement property"),

(B) a property or a right to acquire a property (which property or right is referred to in this clause and for the purposes of paragraphs (2)(*f*.7) and (*f*.9) as a "designated replacement property") that is substantially similar to the specified property or to the designated replacement property, or

(C) a property (referred to for the purposes of paragraphs (2)(*f*.7) and (*f*.9) as a "designated replacement property") the fair market value of which is determined primarily by reference to property that is the specified property or properties from which the specified property primarily derived its fair market value at the original disposition time.

Definitions for paragraphs (2)(*h*) to (*h*.5)

(3.5) The following definitions apply for the purposes of this subsection and paragraphs (2)(*h*) to (*h*.5).

"specified discontinuance"
« discontinuation déterminée »

"specified discontinuance", of a current holder described in paragraph (2)(*h*.2), means

(*a*) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular taxpayer holds the specified property;

(*b*) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular taxpayer holds the specified property; or

(*c*) a disposition of a participating interest in the current holder if, in the course of a transaction or an event that is, or a series of transactions or events that includes, the disposition of the participating interest, the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the specified property) becomes property of a specified purchaser in respect of the particular taxpayer.

"specified purchaser"
« acheteur déterminé »

"specified purchaser", at any time in respect of a particular taxpayer resident in Canada, means a person or partnership that is, at that time,

(*a*) the particular taxpayer;

(*b*) a taxpayer resident in Canada with which the particular taxpayer does not deal at arm's length;

(*c*) a foreign affiliate of a person described in paragraph (*a*) or (*b*);

(*d*) a non-resident taxpayer with which a person described in any of paragraphs (*a*) to (*c*) does not deal at arm's length;

(*e*) a trust (other than an exempt trust) in which a person or partnership described in any of paragraphs (*a*) to (*d*) and (*f*) is beneficially interested; or

(*f*) a partnership in which a person or partnership described in any of paragraphs (*a*) to (*e*) has, directly or indirectly in any manner whatever, a partnership interest.

"specified vendor"
« vendeur déterminé »

"specified vendor", at any time in respect of a particular taxpayer resident in Canada, means a person or partnership that is, at that time,

(*a*) a foreign affiliate of the particular taxpayer;

(*b*) a foreign affiliate of a partnership of which the particular taxpayer is a member;

(*c*) a partnership a member of which is a person described in paragraph (*a*) or (*b*); or

(*d*) a partnership in which a person or partnership described in any of paragraphs (*a*) to (*c*) has, directly or indirectly in any manner whatever, a partnership interest.

"triggering disposition"
« disposition de déclenchement »

"triggering disposition", of a specified property in respect of a particular taxpayer resident in Canada, means the first disposition, after the original disposition time, of the specified property, to a person or partnership that is, immediately after that first disposition, not a specified purchaser in respect of the particular taxpayer, but does not include

(*a*) a disposition of the specified property in respect of the particular taxpayer resident in Canada that occurs in the course of

(i) a dissolution, winding-up, or cessation of the existence, of a corporation or partnership if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the dissolution, winding-up or cessation, a specified purchaser in respect of the particular taxpayer holds the specified property, or

(ii) a merger or combination of corporations or partnerships if, immediately after a transaction or an event that is, or a series of transactions or events that includes, the merger or combination, a specified purchaser in respect of the particular taxpayer holds the specified property; or

(*b*) a disposition of the specified property in respect of the particular taxpayer resident in Canada that is part of a series of transactions or events that includes

(i) the disposition of the specified property to a person or partnership that is not a specified purchaser in respect of the particular taxpayer resident in Canada, and

(ii) the acquisition, by a specified purchaser in respect of the particular taxpayer resident in Canada, of

(A) the specified property (or any portion of the specified property) or a right to, or an interest in, the specified property (or any portion of the right to or interest in the specified property) (which right, interest or portion is referred to for the purposes of paragraphs (2)(*h*.3) and (*h*.5) as a "designated replacement property"),

(B) a property or a right to acquire a property (which property or right is referred to in this clause and for the purposes of paragraphs (2)(*h*.3) and (*h*.5) as a "designated replacement property") that is substantially similar to the specified property or to the designated replacement property, or

(C) a property (which property is referred to for the purposes of paragraphs (2)(*h*.3) and (*h*.5) as a "designated replacement property") the fair market value of which is determined primarily by reference to property that is the specified property or properties from which the specified property primarily derived its fair market value at the original disposition time.

Partnerships and trusts

(3.6) For the purposes of paragraphs (2)(*c*.1) to (*c*.5), (*e*.3) to (*e*.5), (*f*.3) to (*f*.9) and (*h*) to (*h*.5) and subsections (3.2) to (3.5), in determining if a non-resident corporation is a foreign affiliate of a particular corporation resident in Canada or of a particular taxpayer resident in Canada, as the case may be, in circumstances where, at any time, a person or partnership (referred to in this subsection as the "holder") is a member of a partnership, or has a beneficial interest in a trust (other than an exempt trust),

(*a*) the partnership or the trust, as the case may be, is deemed to be a non-resident corporation having capital stock of a single class divided into 100 issued shares;

(*b*) the holder is deemed to own at that time that proportion of the issued shares of that class that

(i) the fair market value, at that time, of the holder's partnership interest in the partnership or of the holder's beneficial interest in the trust, as the case may be,

is of

(ii) the fair market value, at that time, of all partnership interests in the partnership or of all beneficial interests in the trust; and

(*c*) for the purpose of paragraph (*b*), the fair market value, at any time, of the holder's beneficial interest in a trust (other than a non-discretionary trust within the meaning assigned by subsection 17(15)) is deemed to be the fair market value, at that time, of all beneficial interests in the trust.

Anti-avoidance - beneficiaries

(3.7) If it can be reasonably considered that one of the main reasons that an entity holds, at any time, a capital interest in a trust is to cause the trust to satisfy the condition in paragraph (*b*) of the definition "exempt trust" in subsection (3.2), the trust is deemed not to have satisfied at that time that condition.

Computing exempt surplus

(3.8) No amount is to be included in computing the exempt surplus of a foreign affiliate (other than a controlled foreign affiliate) of a particular corporation resident in Canada in respect of a gain of that foreign affiliate arising on a disposition, described in any of paragraphs (2)(*d*) and (*e*) and (*e*.3) to (*e*.5), of excluded property if it may reasonably be considered that one of the main reasons for the claiming of a relevant cost base, or for electing proceeds of disposition, in excess of the adjusted cost base of the excluded property disposed of was the creation of exempt surplus of that foreign affiliate in respect of the particular corporation resident in Canada (or in respect of a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length), having regard to, amongst other things, the following:

(*a*) the amount of any foreign income tax paid by that foreign affiliate in respect of the gain arising on the disposition;

(*b*) the amount of any distribution made, or dividend paid, on or after the disposition, to the particular corporation resident in Canada or a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length; and

(*c*) the amount of any election under section 93 made in respect of a disposition of a share of a foreign affiliate of the particular corporation resident in Canada or of a share of a foreign affiliate of a corporation resident in Canada with which the particular corporation resident in Canada does not deal at arm's length.

(30) Subsection (1) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after 1995, except that

(*a*) for taxation years, of a foreign affiliate of a taxpayer, that begin after 2002 and on or before ANNOUNCEMENT DATE, the definition "controlled foreign affiliate", as enacted by subsection (1), is to be read as follows:

"“controlled foreign affiliate”, at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(*a*) is, at that time, a controlled foreign affiliate of the taxpayer because of paragraph 94.1(2)(*h*),

(*b*) is, at that time, controlled by the taxpayer, or

(*c*) would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by

(i) the taxpayer and not more than four other persons resident in Canada,

(ii) not more than four persons resident in Canada (other than the taxpayer or persons with whom the taxpayer does not deal at arm's length), or

(iii) the taxpayer and each person with whom the taxpayer does not deal at arm's length.”**, and**

(*b*) for taxation years, of a foreign affiliate of a taxpayer, that begin after 1995 and before 2003, that definition is to be read as follows:

"“controlled foreign affiliate”, at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(*a*) is, at that time, controlled by the taxpayer, or

(*b*) would, at that time, be controlled by the taxpayer if the taxpayer owned each share of the capital stock of the foreign affiliate that is owned, at that time, by

(i) the taxpayer and not more than four other persons resident in Canada,

(ii) not more than four persons resident in Canada (other than the taxpayer or persons with whom the taxpayer does not deal at arm's length), or

(iii) the taxpayer and each person with whom the taxpayer does not deal at arm's length.**".**

(31) Subsection (2) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(32) Subsections (3) and (4) apply in respect of taxation years, of a foreign affiliate of a taxpayer, that end on or after December 20, 2002.

(33) Subject to subsection (63), subsections (5), (18) and (20) and (24) to (27) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 1999.

(34) Subsection (6) applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

(35) The definition "entity" in subsection 95(1) of the Act, as enacted by subsection (7), applies in respect of taxation years, of a foreign affiliate of a taxpayer, that end on or after December 20, 2002.

(36) Subject to subsection (69), the definition "taxable Canadian business" in subsection 95(1) of the Act, as enacted by subsection (7), applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(37) Paragraph 95(2)(*a*) of the Act, as enacted by subsection (8), applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002 and subclauses (ii)(A)(II) and (B)(II), and clause (ii)(C), of that paragraph apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, subclauses 95(2)(*a*)(ii)(D)(III) to (V) of the Act, as enacted by subsection (8), apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(38) Subject to subsection (65), subsection (9) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(39) Subsection (10) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that, in applying paragraph 95(2)(*b*) of the Act, as enacted by subsection (10), to taxation years, of a foreign affiliate of the taxpayer, that begin after December 20, 2002 and on or before ANNOUNCEMENT DATE, that paragraph is to be read as follows:

"(*b*) the provision, by a foreign affiliate of a taxpayer, of services or of an undertaking to provide services is deemed to be a separate business, other than an active business, carried on by the affiliate, and any income from that business or that pertains to or is incident to that business is deemed to be income from a business other than an active business, if

(i) the amount paid or payable in consideration for those services or for the undertaking to provide those services

(A) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the income from a business carried on in Canada, by

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(B) is deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the foreign accrual property income of a controlled foreign affiliate of

(I) any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(II) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate, or

(ii) the services are, or are to be, performed by

(A) any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada, or

(B) another person who is related to any taxpayer of whom the affiliate is a controlled foreign affiliate and who is an individual resident in Canada;".

(40) Paragraphs 95(2)(*c*.1) to (*c*.6) of the Act, as enacted by subsection (11), apply to dispositions that occur after December 20, 2002 (other than dispositions required to be made under an agreement in writing made by a vendor on or before December 20, 2002), except that if, in respect of all of the foreign affiliates of a taxpayer, the taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented

(*a*) those paragraphs do not apply, in respect of the taxpayer, to dispositions that occur after December 20, 2002 and on or before ANNOUNCEMENT DATE; and

(*b*) with respect to the dispositions referred to in paragraph (*a*), the Act shall, in respect of the taxpayer, be read as though it contained subsections 93(1.4) to (1.6) that read as follows:

"Disposition of foreign affiliate shares

(1.4) If a specified vendor, in respect of a particular corporation resident in Canada, disposes of a share of the capital stock of a foreign affiliate of the particular corporation to a specified purchaser that would otherwise result in a capital gain to the specified vendor,

(*a*) the share is deemed not to be excluded property of the vendor unless any of subsection 88(3) or paragraphs 95(2)(*c*), (*d*) and (*e*) applied to the disposition of the share; and

(*b*) the cost amount of the share to the purchaser is deemed to be equal to the proceeds of disposition of the share to the vendor.

Specified vendors - foreign affiliates

(1.5) A specified vendor referred to in subsection (1.4) is

(*a*) a foreign affiliate of the particular corporation; or

(*b*) a partnership of which a foreign affiliate of the particular corporation is a member.

Specified purchasers - foreign affiliates

(1.6) A specified purchaser referred to in subsection (1.4) is

(*a*) the particular corporation;

(*b*) a corporation resident in Canada with which the particular corporation does not deal at arm's length;

(*c*) a foreign affiliate of either of those corporations; or

(*d*) a partnership any member of which is described in any of paragraphs (*a*) to (*c*).".

(41) Paragraph 95(2)(*d*) of the Act, as enacted by subsection (11), applies to foreign mergers that occur after ANNOUNCEMENT DATE.

(42) Paragraph 95(2)(*d*.1) of the Act, as enacted by subsection (11), applies to foreign mergers that occur after December 20, 2002.

(43) Paragraph 95(2)(*e*) of the Act, as enacted by subsection (11), applies to liquidations that begin after ANNOUNCEMENT DATE.

(44) Paragraph 95(2)(*e*.1) of the Act, as enacted by subsection (11), applies to liquidations that begin after December 20, 2002.

(45) Paragraph 95(2)(*e*.2) of the Act, as enacted by subsection (11), applies to redemptions, acquisitions and cancellations that occur after ANNOUNCEMENT DATE other than a redemption, an acquisition or a cancellation of shares of a holder of shares that are required to be made under an agreement in writing made by the holder on or before ANNOUNCEMENT DATE.

(46) Paragraphs 95(2)(*e*.3) to (*e*.6) of the Act, as enacted by subsection (11), apply to a receipt, after ANNOUNCEMENT DATE, from the foreign affiliate of property as a dividend or distribution on a share of the foreign affiliate, or as consideration in respect of a redemption, purchase or acquisition of a share of the foreign affiliate, other than property received because of a legal obligation, of the foreign affiliate, that arose on or before ANNOUNCEMENT DATE to pay the dividend or make the distribution, redemption, purchase or acquisition.

(47) The portion of paragraph 95(2)(*f*) of the Act before subparagraph (i), enacted by subsection (12), applies to taxation years, of a foreign affiliate of a taxpayer, that end after 1999.

(48) Subparagraph 95(2)(*f*)(i) of the Act, as enacted by subsection (12), applies to taxation years, of a foreign affiliate of a taxpayer, that end on or after December 20, 2002.

(49) Subject to subsection (63), subsection (13) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(50) Subsection (14) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after ANNOUNCEMENT DATE.

(51) Paragraphs 95(2)(*f*.1) and (*f*.2) of the Act, as enacted by subsection (15), apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that, for those taxation years that begin on or before ANNOUNCEMENT DATE, subparagraph 95(2)(*f*.1)(iv) of the Act, as enacted by subsection (15), is to be read as follows:

"(iv) there were not included in computing the income or loss the portion of the income or loss that can reasonably be considered to have been realized or to have accrued during any period throughout which the affiliate was not a foreign affiliate of the taxpayer or of a person described in any of subparagraphs (*f*)(iii) to (vii);".

(52) Paragraphs 95(2)(*f*.3) to (*f*.9) of the Act, as enacted by subsection (15), apply to a disposition of property that occur after ANNOUNCEMENT DATE, except that those paragraphs do not apply in respect of a disposition of property that is required to be made under an agreement in writing made by the vendor of the property on or before ANNOUNCEMENT DATE.

(53) Paragraphs 95(2)(*f*.91) to (*f*.93) of the Act, as enacted by subsection (15), apply in respect of non-resident corporations that become foreign affiliates after ANNOUNCEMENT DATE.

(54) Paragraph 95(2)(*f*.94) of the Act, as enacted by subsection (15), applies after ANNOUNCEMENT DATE.

(55) Paragraphs 95(2)(*g*) to (*g*.02) of the Act, as enacted by subsection (15), apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(56) Paragraphs 95(2)(*h*) to (*h*.5) of the Act, as enacted by subsection (16), apply to a disposition of property that occurs after ANNOUNCEMENT DATE, except that those paragraphs do not apply in respect of a disposition of property that is required to be made under an agreement in writing made by the vendor of the property on or before ANNOUNCEMENT DATE.

(57) Paragraph 95(2)(*i*) of the Act, as enacted by subsection (16), applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002.

(58) Subject to subsection (69), subsection (17) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that

(*a*) in applying paragraph 95(2)(*k*.1), as enacted by subsection (17), for taxation years, of a foreign affiliate of the taxpayer, that begin on or before ANNOUNCEMENT DATE, that paragraph is to be read without reference to its subparagraph (iv); and

(*b*) in applying paragraph 95(2)(*k*.2), as enacted by subsection (17), for taxation years, of a foreign affiliate of the taxpayer, that

begin on or before ANNOUNCEMENT DATE, that paragraph is to be read without reference to its subclause (iv)(A)(II).

(59) Paragraphs 95(2)(*n*) and (*p*) and (*r*) to (*t*), of the Act, as enacted by subsection (19), apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, paragraph 95(2)(*n*) of the Act, as enacted by subsection (19), applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(60) Paragraphs 95(2)(*o*) and (*q*), as enacted by subsection (19), apply to taxation years that end after 1999.

(61) Paragraphs 95(2)(*u*) to (*x*) of the Act, as enacted by subsection (19), apply to taxation years, of a foreign affiliate of a taxpayer, that begin after ANNOUNCEMENT DATE.

(62) Paragraph 95(2)(*y*) of the Act, as enacted by subsection (19), applies after December 20, 2002.

(63) Subsections (21) to (23) apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, subsections (13) and (20) to (23) apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(64) Subsection (28) applies to the 2001 and subsequent taxation years of a foreign affiliate of a taxpayer. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, subsection (28) applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(65) Subsection 95(3.1) of the Act, as enacted by subsection (29), applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, subsection (9) and subsection 95(3.1) of the Act, as enacted by subsection (29), apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(66) Subsections 95(3.2) to (3.7) of the Act, as enacted by subsection (29), apply after December 20, 2002.

(67) Subsection 95(3.8) of the Act, as enacted by subsection (29), applies to dispositions that occur after ANNOUNCEMENT DATE.

(68) If a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, the following provisions apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994:

(*a*) paragraphs (*a*), (*c*) and (*c*.1) of the definition "excluded property" in subsection 95(1) of the Act, as enacted by subsection (2);

(*b*) subsection (6);

(*c*) subclauses 95(2)(*a*)(i)(A)(II) and (B)(II) and 95(2)(*a*)(ii)(A)(II) and (B)(II), clause 95(2)(*a*)(ii)(C), clause 95(2)(*a*)(ii)(E) and subparagraphs 95(2)(*a*)(v) and (vi), of the Act, as enacted by subsection (8);

(*d*) subsection (13);

(*e*) paragraphs 95(2)(*f*.1), (*f*.2) and (*g*) to (*g*.02) of the Act, as enacted by subsection (15);

(*f*) paragraph 95(2)(*i*) of the Act, as enacted by subsection (16);

(*g*) paragraphs 95(2)(*o*) to (*t*) of the Act, as enacted by subsection (19);

(*h*) subsections (20), (21) and (26); and

(*i*) paragraph 95(3)(*d*) of the Act, as enacted by subsection (28).

(69) If a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to, the definition "taxable Canadian business" in subsection 95(1) of the Act, as enacted by subsection (7), and paragraphs 95(2)(*j*.1) to (*k*.1) and (*k*.4) to (*k*.7) of the Act, as enacted by subsection (17), apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994, except that

(*a*) in applying paragraph (*b*) of the definition "taxable Canadian business" in subsection 95(1) of the Act, as enacted by subsection (7), for the 1997 and preceding taxation years of all foreign affiliates of the taxpayer, that paragraph is to be read in respect of those affiliates as follows:

"(*b*) that is not, because of a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of another country, which has the force of law in Canada at that time, exempt from tax under Part I;**";**

(*b*) in applying clause 95(2)(*k*)(iv)(C) of the Act, as enacted by subsection (17), for taxation years, of all foreign affiliates of the taxpayer, that begin before December 21, 2002, that clause is to be read in respect of those affiliates as follows:

"(C) either

(I) the foreign business was not described in any of clauses (iii)(A) to (C), or

(II) the definition "investment business" in subsection (1) did not apply in respect of the foreign business in the specified taxation year;**"; and**

(*c*) in applying paragraph 95(2)(*k*.1) of the Act, as enacted by subsection (17), for taxation years, of a foreign affiliate of the taxpayer, that begin on or before ANNOUNCEMENT DATE, that paragraph is to be read without reference to its subparagraph (iv).

(70) In applying subparagraph 95(2)(*k*)(iv) of the Act, as enacted by subsection 46(5) of *An Act to amend the Income Tax Act, the Income Tax Application Rules and related Acts*, Statutes of Canada, 1995, chapter 21, as amended by subsection 305(1) of the *Income Tax Amendments Act*, 1997, Statutes of Canada, 1998, chapter 19, to taxation years, of foreign affiliates of a taxpayer, that end after 1999 and begin before December 21, 2002, that subparagraph is, unless the taxpayer makes a valid election under subsection (69), to be read as follows:

"(iv) if the foreign business of the affiliate is a business in respect of which the affiliate would, if the foreign business were carried on in Canada, be required by law to report to a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province,

(A) the affiliate is deemed to be required by law to report to and to be subject to the supervision of such regulating authority, and

(B) if the affiliate is a life insurer and the foreign business of the affiliate is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada, and".

(71) If a taxpayer has made what would, but for this subsection, be a valid election under subsection (68) or (69), as the case may be, and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day that is the third anniversary of the day on which this Act is assented to, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this subsection, never to have been made.

(72) Notwithstanding subsections 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take an election referred to in any of subsections (37), (40), (59), (63) to (65) and (68) and (69), or a revocation referred to in subsection (71), into account.

134. (1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

"qualifying member"
« associé admissible »

"qualifying member", in respect of a partnership at any time, means a person that is at that time a qualifying member of the partnership for the purposes of subdivision i of Division B because of paragraph 95(2)(*o*);

(2) Subsection (1) applies to taxation years that end after 1999.

APPENDIX A

DRAFT *INCOME TAX REGULATIONS* AND EXPLANATORY NOTES

Amendments related to Pensions and Qualified Limited Partnerships

1. Subsection 214(5) of the *Income Tax Regulations* is replaced by the following:

(5) If a payment or transfer of property to which paragraph 146(16)(*b*) of the Act applies is made from a plan, the issuer of the plan shall make an information return in prescribed form in respect of the payment or transfer.

2. Subsection 215(5) of the Regulations is replaced by the following:

(5) If a transfer of an amount to which subsection 146.3(14) of the Act applies is made from a fund, the carrier of the fund shall make an information return in prescribed form in respect of the transfer.

3. (1) Paragraph 4900(1)(*e*) of the Regulations is replaced by the following:

(*e*) a warrant or right issued by a person or partnership (in this paragraph referred to as the "issuer") that gives the holder of the warrant or right, the right to acquire property that is a qualified investment for the plan trust if

(i) the property is a share of the capital stock, or a unit, of the issuer or of another person or partnership that does not, when the warrant or right is issued, deal at arm's length with the issuer, and

(ii) the issuer deals at arm's length with each person who is an annuitant, a beneficiary, an employer or a subscriber under the governing plan of the plan trust;

(*e*.01) an option listed on a stock exchange referred to in section 3200 or 3201 that gives the holder of the option, the right to purchase or sell property that is a qualified investment for the plan trust or, in lieu of delivery of that property, to receive a cash payment in settlement;

(2) Subsection 4900(1) of the Regulations is amended by adding the following after paragraph (*i*.2):

(i.3) a debt obligation issued by a Canadian corporation or a trust resident in Canada if

(i) the principal purpose of the corporation or trust is to derive income from the holding of indebtedness,

(ii) the debt obligation derives all or substantially all of its value from indebtedness held by the corporation or trust,

(iii) at the particular time, the total of all amounts each of which is the cost amount to the corporation or trust of indebtedness of a person or partnership resident in Canada is not less than 80% of the total cost amount to the corporation or trust of all of its property,

(iv) the debt obligation had, at the time of its acquisition by the plan trust, an investment grade rating with a bond rating agency that rates debt in the ordinary course of its business, and

(v) the debt obligation is issued by the corporation or trust as part of a single issue of debt of at least $25 million by the corporation or trust;

(3) The portion of paragraph 4900(1)(*j*) of the Regulations before subparagraph (ii) is replaced by the following:

(*j*) a particular indebtedness that is secured by a mortgage in respect of real property situated in Canada,

(i) the cost amount to a taxpayer of which particular indebtedness (together with the cost amount to a taxpayer of any other indebtedness in respect of the property that ranks equally with or superior to the particular indebtedness) does not exceed the fair market value of the property, except as a result of a decline in the fair market value of the property after the particular indebtedness is issued, and

(4) Subsection 4900(1) of the Regulations is amended by adding the following after paragraph (*n*):

(*n*.01) a debt issued by a limited partnership whose units are listed on a stock exchange referred to in section 3200;

4. (1) Paragraph 5000(1.4)(*a*) of the Regulations is replaced by the following:

(*a*) the whole of the limited unit if, at that time,

(i) the cost amount to the partnership of all foreign property held by it does not exceed 30 per cent of the cost amount to it of all property held by it,

(ii) the number of limited units in the partnership, each of which is held by the specified partner or by any other specified partner with whom the specified partner does not deal at arm's length, does not exceed 30 per cent of the number of limited units in the partnership held by specified partners, and

(iii) the specified partner is not a qualified limited partnership; and

(2) The definition "limited unit" in subsection 5000(7) of the Regulations is replaced by the following:

"limited unit", in a qualified limited partnership, means a unit described in paragraph (*c*) of the definition "qualified limited partnership";

(3) Paragraphs (*b*) to (*d*) of the definition "qualified limited partnership" in subsection 5000(7) of the Regulations are replaced by the following:

(*b*) the agreement governing the partnership specified a single fixed percentage, that has not changed since the formation of the partnership, as the share of the general partner, as general partner, in any income or loss of the partnership from any source, or from sources in any particular place, for any period, except that the agreement may have provided for one or more of the following exceptions:

(i) that the general partner's share, as general partner, in any income or loss of the partnership from specified properties may be less than the fixed percentage,

(ii) that the general partner's share, as general partner, in any income or loss of the partnership from any source, or from sources in any particular place, for any period may be less than the fixed percentage solely in order that the limited partners can receive, in priority to other distributions, a reasonable rate of return, as determined in accordance with the agreement, on their contributed capital,

(iii) that the general partner's share, as general partner, in any income or loss of the partnership from any source, or from sources in any particular place, for any period may be less than the fixed percentage solely in order that the limited partners can receive, in priority to other distributions, amounts that, in total, do not exceed their contributed capital, and

(iv) that the general partner's share, as general partner, in any income or loss of the partnership from any source, or from sources in any particular place, for any period may be more than the fixed percentage solely in order that the general partner can receive, in priority to other distributions, amounts that do not, in total, exceed the amounts by which the distributions to the general partner before that time were less than the fixed percentage because of priority distributions referred to in subparagraph (ii),

(*c*) the interests of the limited partners were described by reference to units in the partnership, and the terms of those units, determined in accordance with the agreement governing the partnership, were identical with respect to the obligations of the limited partners to contribute capital to the partnership and the rights of the limited partners to receive distributions from the partnership,

(*d*) the share of limited partners, as limited partners, in any income or loss of the partnership from any source, or from sources in any particular place, for any period was determined, in accordance with the agreement governing the partnership, by reference to the partners' limited units in the partnership, and for no such income or loss did the share allocated in respect of any one limited unit in the partnership differ from the share allocated to any other limited unit in the partnership except that, in determining if the partnership has complied with the requirements of this paragraph, any amounts allocated to the limited units of a particular limited partner in respect of any income or loss of the partnership from specified properties are to be disregarded to the extent that the amounts are attributable to the investment of capital contributed by the particular limited partner, as limited partner, in excess of that which the particular limited partner was required to contribute based on requests made by the general partner to all limited partners to contribute a specified amount to the capital of the partnership,

(4) Subparagraph (*f*)(v) of the definition "qualified limited partnership" in subsection 5000(7) of the Regulations is replaced by the following:

(iv.1) limited units that the partnership acquired after 2002 in a qualified limited partnership (referred to in this subparagraph as an "investment partnership") and, if the investment partnership ceased, after that acquisition, to be a qualified limited partnership, those units are deemed to be limited units in a qualified limited partnership until the end of the third month following the month in which the cessation occurred,

(v) specified properties, or

(5) The definition "qualified limited partnership" in subsection 5000(7) of the Regulations is amended by adding the word "and" at the end of paragraph (*g*), by striking out the word "and" at the end of paragraph (*h*) and by repealing paragraph (*i*).

(6) Subsection 5000(7) of the Regulations is amended by adding the following in alphabetical order:

"specified property" means property described in any of paragraphs (*a*), (*b*), (*c*), (*f*) and (*g*) of the definition "qualified investment" in section 204 of the Act.

5. The portion of subsection 7308(4) of the Regulations before the table is replaced by the following:

(4) For the purposes of the definition "minimum amount" in subsection 146.3(1) of the Act and subsection 8506(5), the prescribed factor in respect of an individual for a year in connection with a retirement income fund (other than a fund that was a qualifying retirement income fund at the beginning of the year) or the designated factor in respect of an individual for a year in connection with an account under a money purchase provision of a registered pension plan, as the case may be, is the factor, determined in accordance with the following table, that corresponds to the age in whole years (in the table referred to as "Y") attained by the individual at the beginning of the year or that would have been so attained by the individual if the individual was alive at the beginning of the year.

6. The definition "excluded contribution" in subsection 8300(1) of the Regulations is replaced by the following:

"excluded contribution" to a registered pension plan means an amount that is transferred to the plan in accordance with any of subsections 146(16), 146.3(14.1), 147(19), 147.3(1) to (4) and 147.3(5) to (7) of the Act;

7. Subsection 8303(5) of the Regulations is amended adding the following after paragraph (*f*):

(*f*.1) benefits payable as a direct consequence of an increase at any time in 2004 or 2005 in the value of a fixed rate under the provision where

(i) except as otherwise expressly permitted in writing by the Minister, only one fixed rate applies in determining the amount of the individual's lifetime retirement benefits provided in respect of periods after 1989,

(ii) there was no other increase in the value of the fixed rate in the calendar year and before that time, and

(iii) the benefits would be excluded benefits because of paragraph (*f*) if its subparagraph (ii) were read as follows:

"(ii) that would not have become provided had the value of the fixed rate been increased to the amount determined by the formula

$$A - B$$

where

A is the value of the fixed rate at the time of increase (not exceeding the defined benefit limit for the calendar year that includes the time of increase), and

B is the amount, if any, by which the defined benefit limit for the pension credit year exceeds the value of the fixed rate immediately before the time of increase.",

8. Subsection 8308.1(4.1) of the Regulations is amended by replacing the reference to "2004" with a reference to "2003" and the heading before it is amended by replacing the reference to "2003" with a reference to "2002".

9. Subsection 8308.2(2) of the Regulations is amended by replacing the reference to "2005" with a reference to "2004" and the heading before it is amended by replacing the reference to "2004" with a reference to "2003".

10. Subsection 8308.3(3.1) of the Regulations is amended by replacing the reference to "2004" with a reference to "2003" and the heading before it is amended by replacing the reference to "2003" with a reference to "2002".

11. Subsection 8309(3) of the Regulations is amended by replacing the reference to "2005" with a reference to "2004".

12. The portion of subsection 8500(7) of the Regulations before paragraph (*a*) is replaced by the following:

(7) For the purposes of the definition "active member" in subsection (1), subparagraph 8503(3)(*a*)(v) and paragraphs 8504(7)(*d*), 8506(2)(*c*.1) and 8507(3)(*a*), the portion of an amount allocated to an individual at any time under a money purchase provision of a registered pension plan that is attributable to

13. (1) Paragraph 8501(1)(*e*) of the Regulations is replaced by the following:

(*e*) there is no reason to expect that the plan may become a revocable plan pursuant to subsection 147.1(8) or (9) of the Act or subsection 8503(15) or 8506(4).

(2) Paragraph 8501(2)(*c*) of the Regulations is replaced by the following:

(*c*) where the plan contains a money purchase provision, a condition set out in any of paragraphs 8506(2)(*b*) to (*c*.1) and (*e*) to (*i*).

14. (1) Subparagraph 8502(*b*)(iv) of the Regulations is replaced by the following:

(iv) is transferred to the plan in accordance with any of subsections 146(16), 146.3(14.1), 147(19) and 147.3(1) to (8) of the Act, or

(2) Subparagraph 8502(*e*)(i) of the Regulations is replaced by the following:

(i) requires that the retirement benefits of a member under each benefit provision of the plan begin to be paid not later than the end of the calendar year in which the member attains 69 years of age except that,

(A) in the case of benefits-provided under a defined benefit provision, the benefits may begin to be paid at any later time that is acceptable to the Minister, if the amount of benefits (expressed on an annualized basis) payable does not exceed the amount of benefits that would be payable if payment of the benefits began at the end of the calendar year in which the member attains 69 years of age, and

(B) in the case of benefits provided under a money purchase provision in accordance with paragraph 8506(1)(*e*.1), the benefits may begin to be paid not later than the end of the calendar year in which the member attains 70 years of age, and

15. (1) Subparagraph 8506(1)(*c*)(ii) of the Regulations is replaced by the following:

(ii) the total amount of continued retirement benefits payable under the provision for each month does not exceed the amount of retirement benefits (other than benefits permissible under paragraph (*e*.1)) that would have been payable under the provision for the month to the member if the member were alive;

(2) Subparagraph 8506(1)(*d*)(iii) of the Regulations is replaced by the following:

(iii) the total amount of survivor retirement benefits and other retirement benefits (other than benefits permissible under paragraph (*e*.1)) payable under the provision for each month to beneficiaries of the member does not exceed the amount of retirement benefits (other than benefits permissible under paragraph (*e*.1)) that would have been payable under the provision for the month to the member if the member were alive;

(3) Subsection 8506(1) of the Regulations is amended by adding the following after paragraph (*e*):

Variable benefits

(*e*.1) retirement benefits (in this paragraph referred to as "variable benefits"), other than benefits permissible under any of paragraphs (*a*) to (*e*), provided to a member and, after the death of the member, to one or more beneficiaries of the member if

(i) the variable benefits are paid from the member's account,

(ii) the variable benefits provided to the member or a beneficiary (other than a beneficiary who is the specified beneficiary of the member in relation the provision) are payable for a period ending no later than the end of the calendar year following the calendar year in which the member dies,

(iii) the variable benefits provided to a beneficiary who is the specified beneficiary of the member in relation to the provision are payable for a period ending no later than the end of the calendar year in which the specified beneficiary dies, and

(iv) the amount of variable benefits payable to the member and beneficiaries of the member for each calendar year is not less than the minimum amount for the member's account under the provision for the calendar year;

(4) Paragraph 8506(1)(*g*) of the Regulations is replaced by the following:

Payment from account after death

(*g*) the payment, with respect to one or more beneficiaries of a member, of one or more single amounts from the member's account under the provision;

(5) Subsection 8506(2) of the Regulations is amended by adding the following after paragraph (*c*):

Contributions not permitted

(*c*.1) no contribution is made under the provision with respect to a member, and no amount is transferred for the benefit of a member to the provision from another benefit provision of the plan, at any time after the calendar year in which the member attains 69 years of age, other than an amount that is transferred for the benefit of the member to the provision

(i) in accordance with subsection 146.3(14.1) or 147.3(1) or (4) of the Act, or

(ii) from another benefit provision of the plan, where the amount so transferred would, if the benefit provisions were in separate registered pension plans, be in accordance with subsection 147.3(1) or (4) of the Act;

(6) Paragraph 8506(2)(*e*) of the Regulations is replaced by the following:

Allocation of earnings

(*e*) the earnings of the plan, to the extent that they relate to the provision and are not reasonably attributable to forfeited amounts or a surplus under the provision, are allocated to plan members on a reasonable basis and at least monthly;

(7) Paragraphs 8506(2)(*g*) and (*h*) of the Regulations are replaced by the following:

Retirement benefits

(*g*) retirement benefits (other than benefits permissible under paragraph (1)(*e*.1)) under the provision are provided by means of annuities that are purchased from a licensed annuities provider;

Undue deferral of payment — death of member

(*h*) each single amount that is payable after the death of a member (other than a single amount that is payable after the death of the specified beneficiary of the member in relation to the provision) is paid as soon as is practicable after the member's death; and

Undue deferral of payment — death of specified beneficiary

(*i*) each single amount that is payable after the death of the specified beneficiary of a member in relation to the provision is paid as soon as is practicable after the specified beneficiary's death.

(8) Section 8506 of the Regulations is amended by adding the following after subsection (3):

Non-payment of Minimum Amount — Plan Revocable

(4) A registered pension plan that contains a money purchase provision becomes, for the purposes of paragraph 147.1(11)(*c*) of the Act, a revocable plan at the beginning of a calendar year if the total amount of retirement benefits (other than retirement benefits permissible under any of paragraphs (1)(*a*) to (*e*)) paid from the plan in the calendar year in respect of a member's account under the provision is less than the minimum amount for the account for the calendar year.

Minimum Amount

(5) For the purposes of paragraph (1)(*e*.1) and subsection (4), but subject to subsection (6), the minimum amount for a member's account under a money purchase provision of a registered pension plan for a calendar year is the amount determined by the formula

$$A \times B$$

where

A is the balance in the account at the beginning of the year (determined in a manner that reasonably reflects the fair market value of the property held in connection with the account, but without regard to the value of any property held in connection with retirement benefits (other than benefits permissible under paragraph (1)(*e*.1)) provided under the provision with respect to the member that had commenced to be paid before the year and that continue to be payable in the year), and

B is

(*a*) if there is a specified beneficiary of the member for the year in relation to the provision, the factor designated under subsection 7308(4) for the year in respect of the specified beneficiary,

(*b*) if paragraph (*a*) does not apply for the year, the factor designated under subsection 7308(4) for the year in respect of an individual where

(i) the individual was, at the time the designation referred to in subparagraph (ii) was made, the member's spouse or common-law partner,

(ii) the member had, before the beginning of the year, provided the administrator of the plan with a written designation of the individual for the purpose of this paragraph in relation to the provision, and

(iii) the member had not, before the beginning of the year, revoked the designation, and

(*c*) in any other case, the factor designated under subsection 7308(4) for the year in respect of the member.

When Minimum Amount is Nil

(6) The minimum amount for a member's account under a money purchase provision of a registered pension plan for a calendar year is nil if

(*a*) an individual, who is either the member or the specified beneficiary of the member for the year in relation to the provision, is alive at the beginning of the year, and

(*b*) that individual had not attained 69 years of age at the end of the preceding calendar year.

Specified Beneficiary

(7) In this section, an individual is the specified beneficiary of a member for a calendar year in relation to a money purchase provision of a registered pension plan if

(*a*) the member died before the beginning of the year, (*b*) the individual is a beneficiary of the member and was, immediately before the member's death, the member's spouse or common-law partner, and

(*c*) the member or the member's legal representative had, before the beginning of the year, provided the administrator of the plan with a written designation of the individual (and of no other individual) as the specified beneficiary of the member for the calendar year in relation to the provision.

16. Subsection 8509(12) of the Regulations is amended by replacing the reference to "2004" with a reference to "2003" and the heading before it is amended by replacing the reference to "2003" with a reference to "2002".

17. (1) Sections 1, 8 to 11 and 16 and subsections 4(1), (2) and (6) apply after 2002.

(2) Sections 2, 5, 6 and 12 to 14 and subsections 15(1) to (5), (7) and (8) apply after 2003, except that, in respect of retirement benefits provided under a money purchase provision under an arrangement that was accepted for the purpose of paragraph 8506(2)(*g*) of the Regulations before Announcement Date, that paragraph, as enacted by subsection 15(7), is to be read as follows:

(*g*) retirement benefits (other than benefits permissible under paragraph (*e*.1)) under the provision are provided by means of annuities that are purchased from a licensed annuities provider or under an arrangement acceptable to the Minister;

(3) Paragraph 4900(1)(*e*) of the Regulations, as enacted by subsection 3(1), applies to property acquired after Announcement Date.

(4) Paragraph 4900(1)(*e*.01) of the Regulations, as enacted by subsection 3(1), and subsections 3(2) and (4) apply after Announcement Date.

(5) Subsection 3(3) applies

(*a*) in respect of property acquired after Announcement Date, after Announcement Date; and

(*b*) in respect of property acquired on or before Announcement Date, after 2004.

(6) Subsections 4(3) to (5) apply for the purpose of determining if a partnership is, at any time after 2002, a qualified limited partnership.

(7) Section 7 applies with respect to past service events that occur after 2003.

(8) Subsection 15(6) applies after the month that includes ANNOUNCEMENT DATE.

APPENDIX B

DRAFT *INCOME TAX REGULATIONS* AND EXPLANATORY NOTES

Amendments related to Insurers

1. (1) The description of B in subsection 2411(3) of the *Income Tax Regulations* is replaced by the following:

B is the total value for the year of Canadian investment property (other than Canadian equity property and any property described in paragraph (*i*) of the definition "Canadian investment property" in subsection 2400(1)) owned by the insurer at any time in the year;

(2) The description of E in subsection 2411(3) of the Regulations is replaced by the following:

E is the total value for the year of Canadian investment property that is Canadian equity property (other than any property described in paragraph (*i*) of the definition "Canadian investment property" in subsection 2400(1)) owned by the insurer at any time in the year;

(3) The description of H in subsection 2411(3) of the Regulations is replaced by the following:

H is the total value for the year of foreign investment property (other than any property described in paragraph (*e*) of the definition "investment property" in subsection 2400(1)) owned by the insurer at any time in the year; and

2. Section 1 applies to taxation years that end after ANNOUNCEMENT DATE.

APPENDIX C

DRAFT *INCOME TAX REGULATIONS* AND EXPLANATORY NOTES

Amendments related to Foreign Affiliates

1. (1) Subsection 5902(1) of the *Income Tax Regulations* is replaced by the following:

(1) If, at a particular time, one or more shares (each of which is referred to in this subsection as a "disposed share") of a class (referred to in this subsection as the "specified class") of the capital stock of a particular foreign affiliate of a corporation resident in Canada are disposed of by a particular shareholder of the particular foreign affiliate and, because of an election made under subsection 93(1) or (1.2), as the case may be, of the Act in respect of that disposition, a dividend is deemed under subsection 93(1) or (1.2) of the Act to have been received on a disposed share at the time (referred to in this subsection and section 5905 as the "dividend time") that is immediately before the particular time, the following rules apply:

(*a*) the amount of the particular foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated exempt surplus" in respect of the corporation resident in Canada) at the time (in this section and in section 5905 referred to as the "calculation time") that is immediately before the dividend time, is deemed to be the amount that would be its exempt surplus, in respect of the corporation resident in Canada, at the calculation time if

(i) the particular foreign affiliate and each other foreign affiliate of the corporation resident in Canada in which the particular foreign affiliate had, at the calculation time, an equity percentage (each of which other foreign affiliates is referred to in this section as a "subsidiary affiliate") had (except for the purpose of determining consolidated net surplus in respect of the corporation resident in Canada in subparagraph (iii)), at the calculation time, no amount of exempt deficit, taxable surplus or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the amount that would be the exempt surplus, in respect of the corporation resident in Canada, of a subsidiary affiliate in which it has, immediately before the calculation time, a direct equity percentage if that exempt surplus were, immediately before the calculation time, determined in the following manner:

(A) the exempt surplus, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the exempt surplus of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the exempt surplus, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's exempt surplus in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the exempt surplus, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

$$A/B$$

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, in respect of the corporation resident in Canada, its consolidated exempt surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the

particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated exempt surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the exempt surplus, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*b*) the amount of the particular foreign affiliate's exempt deficit, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated exempt deficit" in respect of the corporation resident in Canada) at the calculation time, is deemed to be the amount that would be its exempt deficit, in respect of the corporation resident in Canada, at that time if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, taxable surplus or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the exempt deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the exempt deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that exempt deficit were, immediately before the calculation time, determined in the following manner:

(A) the exempt deficit, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the exempt deficit of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the exempt deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's exempt deficit in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the exempt deficit, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

$$A/B$$

where

A is the amount of dividends that would be received by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its exempt deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated exempt deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the exempt deficit, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the exempt deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*c*) the amount of the particular foreign affiliate's taxable surplus and underlying foreign tax, in respect of the corporation resident in Canada, (referred to, respectively, in this subsection as the "consolidated taxable surplus", and "consolidated underlying foreign tax", in respect of the corporation resident in Canada) at the calculation time, is deemed to be the amount that would be its taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, at that time, if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, exempt deficit or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by an amount equal to the total of all amounts each of which is the particular foreign affiliate's proportionate share of the taxable surplus, or underlying foreign tax, as the case may be, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that taxable surplus and underlying foreign tax were, immediately before the calculation time, determined in the following manner:

(A) the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the taxable surplus, or underlying foreign tax, respectively, of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's taxable surplus, and underlying foreign tax, respectively, in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the taxable surplus, or underlying foreign tax, as the case may be, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the particular foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

$$A/B$$

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the

particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated taxable surplus, and consolidated underlying foreign tax, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*d*) the amount of the particular foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated taxable deficit" in respect of the corporation resident in Canada) at the calculation time is deemed to be the amount that would be its taxable deficit, in respect of the corporation resident in Canada, at that time if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, exempt deficit or taxable surplus, in respect of the corporation resident in Canada,

(ii) the amount of the taxable deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the taxable deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that taxable deficit were, immediately before the calculation time, determined in the following manner:

(A) the taxable deficit, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the taxable deficit of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the taxable deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's taxable deficit in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the taxable deficit, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

$$A/B$$

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the

particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of taxable deficit, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the taxable deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*e*) for the purpose of applying subsection 5901(1) to subsection 5900(1), and for the purpose of paragraph (*f*),

(i) the particular foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(ii) the particular foreign affiliate's exempt deficit in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(iii) the particular foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(iv) the particular foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(v) the particular foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount of the particular foreign affiliate's consolidated underlying foreign tax, in respect of the corporation resident in Canada, at that time, and

(vi) the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which

(A) the total of the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, at that time,

exceeds

(B) the total of the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, at that time;

(*f*) the attributed net surplus in respect of a disposed share of the specified class in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount that would be received by the holder of the disposed share, in respect of the disposed share, at the dividend time, if the particular foreign affiliate paid a dividend, at that time, on all of its shares, the total of which was equal to the amount of its consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time;

(*g*) for the purpose of applying subsection 5901(1) to subsection 5900(1), the amount of the whole dividend paid by the particular foreign affiliate, at the dividend time, on the shares of the specified class is deemed to be equal to the amount obtained when the total of all amounts each of which is an amount deemed by subsection 93(1) or (1.2) of the Act to have been received as a dividend on a disposed share of the specified class is multiplied by the greater of

(i) one, and

(ii) the amount determined by the formula

$$A/B$$

where

A is the amount determined, under subparagraph (*e*)(vi), to be the amount of the particular foreign affiliate's consolidated net surplus in respect of the corporation, immediately before the dividend time, and

B is the greater of

(A) one, and

(B) the total of all amounts each of which is the amount determined, under paragraph (*f*), to be the amount of the attributed net surplus, in respect of a disposed share of the specified class, in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time;

(*h*) the amount prescribed, for the purpose of subsection 93(1) or (1.2) of the Act, as the case may be, in respect of a disposition of a disposed share of the specified class is not to exceed the amount determined, under paragraph (*f*), to be the amount of the attributed net surplus in respect of the disposed share in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time; and (*i*) for the purposes of paragraphs (*a*) to (*d*), the consolidated net surplus, at any time, in respect of a corporation resident in Canada, of a particular foreign affiliate of the corporation resident in Canada, is the amount that would be determined in subparagraph (*e*) in respect of the particular foreign affiliate if the reference in that paragraph to the expression "immediately before the dividend time" were read as a reference to the expression "at any time".

(2) Subsection 5902(2) of the Regulations is repealed.

(3) Subsection 5902(3) of the Regulations is replaced by the following:

(3) If a corporation resident in Canada elects, under subsection 93(1) or (1.2) of the Act, in respect of the disposition of a share of the capital stock of a foreign affiliate of the corporation, no adjustment, other than an adjustment referred to in subsection 5905(2), (4), (5) or (8), may be made to the foreign affiliate's

(*a*) exempt surplus in respect of the corporation;

(*b*) exempt deficit in respect of the corporation;

(*c*) taxable surplus in respect of the corporation;

(*d*) taxable deficit in respect of the corporation; or

(*e*) underlying foreign tax in respect of the corporation.

(4) Subsection 5902(6) of the Regulations is replaced by the following:

(6) The amount designated in an election deemed by subsection 93(1.1) of the Act to have been made under subsection 93(1) of the Act is prescribed to be the amount that is the lesser of

(*a*) the capital gain, if any, otherwise determined in respect of the disposition of the share, and

(*b*) the amount of attributed net surplus (as determined under paragraph (1)(*f*)) in respect of the share.

(7) The amount designated in an election deemed by subsection 93(1.3) of the Act to have been made under subsection 93(1.2) of the Act is prescribed to be the amount that is the lesser of

(*a*) the taxable capital gain, if any, otherwise determined in respect of the disposition of the share, and (*b*) the amount that is one-half of the amount referred to in paragraph (6)(*b*).

2. (1) Subsections 5905(1) and (2) of the Regulations are replaced by the following:

(1) If, at any time, other than in the course of a transaction to which subsection (2) or (5) applies, a corporation resident in Canada or a foreign affiliate of such a corporation acquires in any manner whatever shares of the capital stock of another corporation that was, immediately after that time, a foreign affiliate of the corporation (in this subsection referred to as the "acquired affiliate") and as a result of that acquisition the surplus entitlement percentage of the corporation in respect of the acquired affiliate and in respect of any other foreign affiliate of the corporation resident in Canada (the acquired affiliate and each such other foreign affiliate each being referred to in this subsection as the "particular relevant foreign affiliate"), increases, the following rules apply:

(*a*) for the purposes of this Part, the amount of the exempt surplus or exempt deficit, the taxable surplus or taxable deficit, and the underlying foreign tax, in respect of the corporation, of the particular relevant foreign affiliate is (unless subsection (8) applies to the particular relevant foreign affiliate because of the acquisition of the shares) to be, at that time, adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, immediately before that time, of the corporation in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately before that time,

is of

(ii) the surplus entitlement percentage, immediately after that time, of the corporation in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately after that time, and

(*b*) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the adjusted amounts determined under paragraph (*a*) are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation.

(2) If at any time (referred to in this subsection as the "disposition time") a particular foreign affiliate of a corporation resident in Canada redeems, acquires or cancels (other than a redemption, an acquisition or a cancellation in respect of which an adjustment has previously been made under this subsection or subsection (1) as it read prior to November 13, 1981) in any manner whatever (otherwise than by way of a winding-up) one or more shares (referred to in this subsection and subsections (16) to (23) as "disposed shares") of any class of its capital stock, the following rules apply:

(*a*) if, because of an election made by the corporation under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") is deemed to have been received on the disposed shares, by the corporation or by another foreign affiliate of the corporation, for the purpose of the adjustment required by paragraph (*b*),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate or of another foreign affiliate (the particular foreign affiliate and each such other foreign affiliate being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") of the corporation resident in Canada in which the particular foreign affiliate has an equity percentage at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the disposition time, there is to be included, under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) the amount of the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) the amount of the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) the amount of the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the particular foreign affiliate's consolidated underlying foreign tax (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

B is the particular foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

C is the portion, of the particular foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition), that is prescribed, by paragraph 5900(1)(*d*), to be applicable to the portion of the whole dividend (as determined, under paragraph 5902(1)(*g*), in respect of the disposition dividend in respect of the disposed shares) paid on shares of the specified class that is prescribed, by paragraph 5900(1)(*c*), to have been paid out of the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor in respect of the particular relevant foreign affiliate, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the particular relevant foreign affiliate's exempt deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the particular relevant foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time;

(*b*) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included that time, had ended immediately before that time, is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition; and

(*c*) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the amounts determined under paragraph (*b*), in respect of the particular relevant foreign affiliate, in respect of the corporation resident in Canada, are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation resident in Canada.

(2) Subsection 5905(4) of the Regulations is replaced by the following:

(4) For the purpose of subsection (3),

(*a*) if, at any time, a foreign affiliate of a corporation resident in Canada disposes of one or more shares (referred to in this subsection and subsections (16) to (23) as the "disposed shares") of a class of the capital stock of a predecessor corporation and the foreign affiliate is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") on the disposed shares, for the purposes of the adjustments required by paragraphs (*b*) and (3)(*b*),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of each predecessor corporation and of each other foreign affiliate of the corporation resident in Canada in which a predecessor foreign affiliate has an equity percentage (the particular predecessor corporation and each such other foreign affiliate being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the foreign merger, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) an amount equal to the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the consolidated underlying foreign tax (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, of the particular predecessor corporation that issued the disposed shares, in respect of the disposition,

B is the amount of the consolidated underlying foreign tax (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, of the particular predecessor corporation that issued the disposed shares, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(*d*), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada that disposed of the disposed shares, in respect of the disposition of the disposed shares, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included, under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, immediately before that time, of the particular relevant foreign affiliate, and

(v) in computing the particular relevant foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, immediately before that time, of the particular relevant foreign affiliate; and (*b*) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making that adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate that otherwise would have included that time, had ended immediately before that time,

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition.

(3) The portion of subsection 5905(5) of the Regulations between paragraphs (*c*) and (*d*) is replaced by the following:

the following rules apply for the purposes of this Part in respect of the particular affiliate and each other foreign affiliate of the predecessor corporation in which the particular affiliate has an equity percentage (the particular affiliate and each such other foreign affiliate each being referred to in subsections (16) to (23) as the "particular relevant foreign affiliate"):

(4) Section 5905 of the Regulations is amended by adding the following after subsection (5):

Amalgamations

(5.1) Where there has been an amalgamation described in paragraph (5)(*b*) to which subsection 87(11) of the Act applies and in respect of that amalgamation an amount has been — under paragraph 88(1)(*d*) of the Act by the corporation (referred to in this subsection as the "parent corporation") described in subsection 87(11) of the Act as the parent — designated in respect of shares of a corporation (referred to in this subsection as the "particular foreign affiliate") that is, immediately before the amalgamation, a foreign affiliate of the corporation (referred to in this subsection as the "subsidiary corporation") resident in Canada that is described in subsection 87(11) of the Act as the subsidiary, or designated in respect of an interest in a partnership that holds such shares, the following rules apply for the purposes of paragraphs (5)(*d*) to (*h*):

(*a*) subject to paragraph (*c*), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate, in respect of the subsidiary corporation and the parent corporation is deemed to be nil, immediately before the amalgamation;

(*b*) subject to paragraph (*c*), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, in respect of the subsidiary corporation, of each other foreign affiliate (referred to in this subsection as a "lower-tier foreign affiliate") of the subsidiary corporation (other than the particular foreign affiliate) in which the particular foreign affiliate has, immediately before the amalgamation, an equity percentage, is deemed to be nil, immediately before the amalgamation; and

(*c*) the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate and of each lower-tier foreign affiliate, in respect of the parent corporation, is deemed to be the amount that would be determined if

(i) in addition to the shares or partnership interests held by the parent corporation, if any, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the parent corporation, in respect of the parent corporation, the shares or partnership interests that were held by the subsidiary corporation at any time in the period (in this subsection referred to as the "control period") that begins at the time the parent corporation last acquired control of the subsidiary corporation and ends immediately before the amalgamation, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, were held by the parent corporation at the same times in the control period that they were held by the subsidiary corporation,

(ii) the parent corporation had acquired, at the time the parent corporation last acquired control of the subsidiary corporation, all the shares and partnership interests held, at that time, by the subsidiary corporation that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation and

(iii) where the subsidiary corporation acquired or disposed of, as the case may be, any shares or partnership interests in the control period that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, the parent corporation had acquired or disposed of, as the case may be, the shares or partnership interests at the same time they were acquired or disposed of, as the case may be, by the subsidiary corporation.

Windings-up

(5.2) Where there has been a winding-up described in paragraph (5)(*c*) and in respect of that winding-up an amount has been — under paragraph 88(1)(*d*) of the Act by the corporation (referred to in this subsection as the "parent corporation") described in subsection 88(1) of the Act as the parent — designated in respect of shares of a corporation (referred to in this subsection as the "particular foreign affiliate") that is, immediately before the winding-up, a foreign affiliate of the corporation (referred to in this subsection as the "subsidiary corporation") resident in Canada that is described in subsection 88(1) of the Act as the subsidiary, or designated in respect of an interest in a partnership that holds such shares, the following rules apply for the purposes of paragraphs (5)(*d*) to (*h*):

(*a*) subject to paragraph (*c*), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate, in respect of the subsidiary corporation and the parent corporation is deemed to be nil, immediately before the winding-up;

(*b*) subject to paragraph (*c*), the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, in respect of the subsidiary corporation, of each other foreign affiliate (referred to in this subsection as a "lower-tier foreign affiliate") of the subsidiary corporation (other than the particular foreign affiliate) in which the particular foreign affiliate has, immediately before the winding-up, an equity percentage, is deemed to be nil, immediately before the winding-up; and (*c*) the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, as the case may be, of the particular foreign affiliate and each lower-tier foreign affiliate, in respect of the parent corporation, is deemed to be the amount that would be determined if

(i) in addition to the shares or partnership interests held by the parent corporation, if any, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the parent corporation, in respect of the parent corporation, the shares or partnership interests that were held by the subsidiary corporation at any time in the period (in this subsection referred to as the "control period") that begins at the time the parent corporation last acquired control of the subsidiary corporation and ends immediately before the winding-up, that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, were held by the parent corporation at the same time in the control period that they were held by the subsidiary corporation,

(ii) the parent corporation acquired, at the time the parent corporation last acquired control of the subsidiary corporation, all the shares and partnership interests held, at that time, by the subsidiary corporation that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, and

(iii) where the subsidiary corporation acquired or disposed of, as the case may be, any shares or partnership interests in the control period that are relevant in computing the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax, of any foreign affiliate of the subsidiary corporation, in respect of the subsidiary corporation, the parent corporation is deemed to have acquired or disposed of, as the case may be, the shares or partnership interests at the same time they were acquired or disposed of, as the case may be, by the subsidiary corporation.

(5) Subsection 5905(6) of the Regulations is replaced by the following:

(6) For the purpose of subsection (5), the following rules apply:

(*a*) if paragraph (5)(*a*) applies and the predecessor corporation is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") on one or more of the shares (each of which is referred to in this subsection and subsections (16) to (23) as a "disposed share") of the particular foreign affiliate (referred to in this subsection as the "issuing foreign affiliate") disposed of, at that time, for the purpose of the adjustment required by paragraph (*b*),

(i) in computing the exempt surplus, in respect of the predecessor corporation, of a particular relevant foreign affiliate at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the disposition time, the following rules apply:

(A) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and the issuing foreign affiliate has, at that time, an amount of consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed share that is equal to or greater than the amount of its consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under subparagraph 5902(1)(*a*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares, B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under subparagraph 5902(1)(*a*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, deemed to be received on the disposed shares by the person that disposed of the disposed shares, that is prescribed by paragraph 5900(1)(*a*) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

(B) if the amount determined, in respect of the particular relevant foreign affiliate, for either B or D in the formula in clause (A) is nil, the amount determined, in respect of the particular relevant foreign affiliate, by that formula is deemed to be nil,

(C) there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time if

(I) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and

(II) the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed share that is equal to or greater than the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

(D) there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), an amount equal to the particular relevant foreign affiliate's taxable deficit allocation in respect of the disposed shares,

(ii) in computing the taxable surplus, in respect of a predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, the following rules apply:

(A) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and the issuing foreign affiliate has, at that time, an amount of consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, there is to be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under subparagraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under subparagraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, deemed to be received on the disposed shares by the person that disposed of the disposed shares, that is prescribed by paragraph 5900(1)(*b*) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

(B) if the amount determined, in respect of the particular relevant foreign affiliate for either B or D in the formula in clause (A) is nil, the amount determined, in respect of the particular relevant foreign affiliate, by that formula is deemed to be nil,

(C) there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the amount of particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

(D) there is to be included in subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), an amount equal to the particular relevant foreign affiliate's exempt deficit allocation in respect of the disposed shares,

(iii) in computing the underlying foreign tax, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) an amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for either B or D in the formula is nil)

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition,

B is the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(*d*), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time, and

(B) an amount determined by the formula

$$A \times (B+C)/D$$

where

A is the underlying foreign tax, in respect of the particular predecessor corporation, at the balance adjustment time, of the particular relevant foreign affiliate in respect of the disposition of the disposed shares.

B is the amount determined under clause (ii)(C) in respect of the particular relevant foreign affiliate, in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the exempt deficit allocation, in respect of the predecessor corporation, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares, and

D is the taxable surplus in respect of the predecessor corporation, at the balance adjustment time, of the particular relevant foreign affiliate,

(iv) in computing the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time; and

(*b*) the exempt surplus or the exempt deficit, the taxable surplus or the taxable deficit and the underlying foreign tax in respect of a predecessor corporation (within the meaning assigned by subsection (5)) and in respect of the acquiring corporation (within the meaning assigned by subsection (5)) of a particular relevant foreign affiliate is, at the balance adjustment time, to be adjusted to become the proportion of the amount of the surplus, deficit or underlying foreign tax determined without reference to this paragraph that

(i) the surplus entitlement percentage, immediately before the time of the latest of the transactions referred to in paragraphs (5)(*a*), (*b*) and (*c*), of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the particular relevant foreign affiliate, determined on the assumptions

(A) that the taxation year of the particular relevant foreign affiliate that otherwise would have included the balance adjustment time had ended immediately before that time, and

(B) if the transaction is a disposition referred to in paragraph (5)(*a*), that the shares referred to in that paragraph were the only shares owned by the predecessor corporation at the balance adjustment time,

is of

(ii) the surplus entitlement percentage, immediately after the time of the latest of the transactions referred to in paragraphs (5)(*a*), (*b*) and (*c*), of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately after that time.

(6) Subsection 5905(7) of the Regulations is replaced by the following:

(7) If paragraph 95(2)(*e*) or (*e*.1) of the Act applies to a liquidation and a dissolution of a foreign affiliate (in this subsection and subsections (7.1) to (7.4) referred to as the "disposing foreign affiliate") of a corporation resident in Canada,

(*a*) where paragraph 95(2)(*e*.1) of the Act so applies, for the purpose of computing the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation, of each other foreign affiliate of the corporation that has a direct equity percentage in the disposing foreign affiliate immediately before the specified time, it is deemed

(i) to have received, immediately before that time, dividends the total of which is equal to the amount that it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before the specified time, paid dividends on all shares of its capital stock the total of which was equal to the sum of its exempt surplus, if any, and its taxable surplus, if any, in respect of the corporation immediately before that time,

(ii) to have received, immediately before that time, dividends prescribed by paragraph 5900(1)(*a*) to have been paid out of the exempt surplus of the disposing foreign affiliate the total of which is equal to that proportion of the total of the dividends deemed, under subparagraph (i), to have been received by it that the amount, immediately before that time, of the exempt surplus in respect of the corporation of the disposing foreign affiliate, referred to in subparagraph (i), is of the total of the amount, immediately before that time, of exempt surplus and the taxable surplus in respect of the corporation of the disposing foreign affiliate, referred to in subparagraph (i), and

(iii) to have received dividends prescribed by paragraph 5900(1)(*b*) to have been paid out of the taxable surplus of the disposing foreign affiliate the total of which is equal to the amount, if any, by which the total of the dividends deemed to be received by it under subparagraph (i) exceeds the total of the dividends deemed by subparagraph (ii) to be dividends that have been prescribed to have been paid out of the exempt surplus, in respect of the corporation, of the disposing foreign affiliate;

(*b*) where paragraph 95(2)(*e*) or (*e*.1) of the Act so applies, the amount, in respect of the corporation, of the exempt deficit of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the specified time is to be, immediately before that time, increased by the total of

(i) its proportionate share of the exempt deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount, if any, by which

(A) its proportionate share of the exempt deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time,

exceeds

(B) the amount of the decrease, determined under paragraph (*d*), to the amount of its exempt surplus in respect of the corporation immediately before that time;

(*c*) the amount, in respect of the corporation, of the taxable deficit of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the specified time is to be, immediately before that time, increased by the total of

(i) its proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount, if any, by which

(A) its proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time,

exceeds

(B) the amount of the decrease, determined under paragraph (e), to the amount of its taxable surplus in respect of the corporation;

(*d*) the amount, in respect of the corporation, of the exempt surplus of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the specified time is to be, immediately before that time, decreased by the lesser of

(i) its proportionate share of the exempt deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount of its exempt surplus in respect of the corporation as otherwise determined under the definition "exempt surplus" in subsection 5907(1); and

(*e*) the amount, in respect of the corporation, of the taxable surplus of each other foreign affiliate of the corporation that had a direct equity percentage in the disposing foreign affiliate immediately before the specified time is to be, immediately before that time, decreased by the lesser of

(i) its proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation immediately before that time, and

(ii) the amount of its taxable surplus in respect of the corporation as otherwise determined under the definition "taxable surplus" in subsection 5907(1).

(7.1) The specified time in relation to a liquidation and a dissolution of a foreign affiliate mentioned in subsection (7) is the time that is the earlier of

(*a*) the time of dissolution of the disposing foreign affiliate, and

(*b*) the time of the earliest distribution of property as part of the liquidation and the dissolution of the disposing foreign affiliate.

(7.2) For the purpose of subsection (7), the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the disposing foreign affiliate in respect of the corporation at any time is to be determined on the assumption that the taxation year of the disposing foreign affiliate that otherwise would have included that time had ended immediately before that time.

(7.3) For the purpose of paragraphs (7)(*b*) and (*d*), a foreign affiliate's proportionate share of the exempt deficit, if any, of the disposing affiliate in respect of the corporation at any time is equal to the amount it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before that time, paid a dividend equal to the amount of its exempt deficit, if any, in respect of the corporation.

(7.4) For the purposes of paragraphs (7)(*c*) and (*e*), a foreign affiliate's proportionate share of the taxable deficit, if any, of the disposing foreign affiliate in respect of the corporation at any time is equal to the amount it could reasonably have expected to receive if the disposing foreign affiliate had, immediately before that time, paid a dividend equal to the amount of its taxable deficit, if any, in respect of the corporation.

(7) Subsection 5905(8) of the Regulations is replaced by the following:

(8) If, at any time, a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") is, because of an election made by a corporation resident in Canada under subsection 93(1) or (1.2) of the Act, deemed to have been received on one or more shares (each of which is referred to in this subsection and subsections (16) to (23) as a "disposed share") of a class of the capital stock of a particular foreign affiliate (referred to in this subsection as the "issuing foreign affiliate") of the corporation resident in Canada that were disposed (which disposition is referred in this subsection and subsections (16) to (23) as the "disposition") to the corporation resident in Canada or to another corporation that was, immediately after the disposition, a foreign affiliate of the corporation resident in Canada, the following rules apply:

(*a*) for the purpose of the adjustment required by paragraph (*b*),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of the issuing foreign affiliate or another foreign affiliate of the corporation resident in Canada in which the issuing foreign affiliate has an equity percentage (the issuing foreign affiliate and each such other foreign affiliate each being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the time of the disposition, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) an amount equal to the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the taxable surplus, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

B is the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(*d*), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada that disposed of the disposed shares, in respect of the disposition of the disposed shares, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (viii) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (vi) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time;

(*b*) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate that otherwise would have included that time, had ended immediately before that time,

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition; and

(*c*) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the amounts determined under paragraph (*b*) are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus, and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation resident in Canada.

(8) Section 5905 of the Regulations is amended by adding the following after subsection (15):

(16) The exempt deficit allocation, of a particular relevant foreign affiliate in respect of a corporation resident in Canada, in respect of disposed shares of the particular foreign affiliate of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the

disposed shares, that exceeds the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(*a*) the amount determined by the formula

$$1/E \times [(A-B) \times C/D]$$

where

A is the amount of the issuing foreign affiliate's consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is

(i) subject to subparagraph (ii), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time if the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(ii) if the particular relevant foreign affiliate is the issuing foreign affiliate, 1; and (*b*) if the amount determined, in respect of the particular relevant foreign affiliate, for the description of D or E in the formula in paragraph (*a*) is nil, nil.

(17) The exempt deficit reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

(*a*) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") has, at the balance adjustment time, consolidated exempt surplus (as determined under subparagraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of its consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(i) the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the amount of the issuing foreign affiliate's consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is

(A) subject to clause (B), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that, under subsections 5905(10) to (13), would be determined, at the balance adjustment time, where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(B) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(ii) if the value determined, in respect of the particular relevant foreign affiliate, for the description of any of A, B or D in the formula in subparagraph (i) is nil, nil; and

(*b*) the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares that is equal to or greater than the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares.

(18) The exempt surplus reduction in respect of a corporation resident in Canada, of a particular relevant foreign affiliate in respect of disposed shares is

(*a*) the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated exempt surplus, in respect of the corporation resident in Canada, (as determined under paragraph 5902(1)(*a*)) of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (referred to in this subsection as the "issuing foreign affiliate"), in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares and that is prescribed by paragraph 5900(1)(*a*) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person that disposed of the disposed shares;

(*b*) if the amount determined, in respect of the particular relevant foreign affiliate, for either of A or B, in the formula in paragraph (*a*) is nil, nil; and

(*c*) if an amount is determined, in respect of the particular relevant foreign affiliate, under paragraph (17)(*b*), nil.

(19) The taxable deficit allocation, of a particular relevant foreign affiliate of a corporation resident in Canada, in respect of disposed shares of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(*a*) the amount determined by the formula

$$1/E \times [(A - B) \times C/D]$$

where

A is the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under subparagraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is

(i) subject to subparagraph (ii), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time, where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections; and

(ii) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(*b*) where the amount determined, in respect of the particular relevant foreign affiliate, for the description of D or E in the formula in paragraph (*a*) is nil, nil.

(20) The taxable deficit reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

(*a*) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus, in respect of the corporation resident in Canada, and the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") has, at the balance adjustment time, consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(i) the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is

(A) subject to clause (B), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(B) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(ii) where the amount determined, in respect of the particular relevant foreign affiliate, for the description of A, B or D in the formula in subparagraph (i) is nil, nil; and

(*b*) the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares.

(21) The taxable surplus reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate, in respect of disposed shares, is

(*a*) the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate"), B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) or (1.2) of the Act, in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares and that is prescribed by paragraph 5900(1)(*b*) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person that disposed of the disposed shares;

(*b*) if the amount determined, in respect of the particular relevant foreign affiliate, for the description of A or B in the formula in paragraph (*a*) is nil, nil; and

(*c*) if an amount is determined, in respect of the particular relevant foreign affiliate, under paragraph (20)(*b*), nil.

(22) The underlying foreign tax reduction in respect of the corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares, is the amount determined by the following formula

$$A \text{ x } (B + C)/D$$

where

A is the underlying foreign tax in respect of the corporation resident in Canada, at the balance adjustment time, of the particular relevant foreign affiliate,

B is the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is the taxable surplus in respect of the corporation resident in Canada of the particular relevant foreign affiliate, at the balance adjustment time.

(23) The specified adjustment factor, in respect of a corporation resident in Canada, in respect of a particular relevant foreign affiliate of the corporation resident in Canada, of the person that disposed of disposed shares, in respect of the disposition of the disposed shares, is the amount determined by the formula

$$A/B$$

where

A is

(*a*) where the corporation resident in Canada disposed of the disposed shares, 100 per cent, and

(*b*) where another foreign affiliate of the corporation resident in Canada disposed of the disposed shares, the surplus entitlement percentage of the corporation resident in Canada in respect of that other foreign affiliate, immediately before the disposition of the disposed shares, and

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the particular relevant foreign affiliate, immediately before the disposition of the disposed shares.

3. (1) Subsection 5907(1) of the Regulations is amended by replacing, with any grammatical changes that the circumstances require, in each of the following subparagraphs the reference to "subsection 5905(7)" with a reference to "subsections 5905(7) to (7.4)":

(*a*) subparagraph (iii) of the description of A in the definition "exempt surplus";

(*b*) subparagraph (iii) of the description of A in the definition "taxable surplus"; and

(*c*) subparagraph (iv) of the description of A in the definition "underlying foreign tax".

(2) Paragraph (*b*) of the definition "earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) in any other case, the total of all the amounts required by paragraph 95(2)(*a*) of the Act to be included in computing the affiliate's income for the year from an active business;

(3) The portion of the definition « gains exonérés » in subsection 5907(1) of the French version of the Regulations before paragraph (*a*) is replaced by the following:

« gains exonérés » En ce qui concerne une société étrangère affiliée d'une société pour une année d'imposition de la société affiliée, le total des montants représentant chacun l'un des montants suivants, moins la partie de l'impôt sur le revenu ou sur les bénéfices payé par la société affiliée pour l'année au gouvernement d'un pays qu'il est raisonnable de considérer comme un impôt sur les gains visés à l'alinéa c) ou au sous-alinéa d)(ii) :

(4) The portion of paragraph (*a*) of the definition « gains exonérés » in subsection 5907(1) of the French version of the Regulations after subparagraph (iii) is replaced by the following:

pour l'application du présent alinéa, lorsque la société affiliée a disposé d'immobilisations qui étaient des actions du capital-actions d'une autre société étrangère affiliée de la société donnée en faveur d'une autre société qui était, immédiatement après la disposition, une société étrangère affiliée de la société donnée, est exclue des gains en capital de la société affiliée pour l'année la fraction de ces gains qui correspond au total des montants représentant chacun l'excédent de la juste valeur marchande, à la fin de l'année d'imposition 1975 de la société affiliée, de l'une des actions dont il a été disposé sur son prix de base rajusté;

(5) Paragraph (*b*) of the definition "exempt deficit" in subsection 5907(1) of the Regulations is replaced by:

(*b*) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (viii) of the description of A in that definition;

(6) The definition "exempt earnings" in subsection 5907(1) of the Regulations is amended by adding the following after paragraph (*a*):

(*a*.1) the total of all amounts each of which is an amount determined by the formula

$$A - B$$

where

A is the amount that would be included by paragraph (*c*), (*c*.1) or (*c*.2) of the definition "capital dividend account" in subsection 89(1) of the Act in determining the capital dividend account of the affiliate at the end of the taxation year if

(i) the affiliate were the corporation referred to in that definition, and

(ii) the references in paragraphs (*c*.1) and (*c*.2) of that definition, and in paragraph (*c*) of that definition as that paragraph read in its application to taxation years that ended before February 28, 2000, to the expression "a business" were read as references to the expression "a business that is not an active business within the meaning assigned by subsection 95(1)", and

(iii) section 14 of the Act were modified, in its application to the affiliate, in accordance with paragraphs 95(2)(*f*.91) and (*f*.92) of the Act, and

B is the amount determined for A at the end of the affiliate's taxation year that immediately precedes the taxation year,

(7) Subparagraph (*d*)(ii) of the definition "exempt earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(ii) the earnings of the particular affiliate for the year from an active business to the extent that they derive from

(A) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of subparagraph 95(2)(*a*)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by a non-resident corporation, to which the particular affiliate and the particular corporation are related throughout the year, in the course of an active business carried on by the non-resident corporation the income or loss from which would, if the non-resident corporation were a foreign affiliate of a corporation, be included in computing the non-resident corporation's exempt earnings or exempt loss,

(B) if the particular corporation is a life insurance corporation resident in Canada throughout the year and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of subparagraph 95(2)(*a*)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by the particular corporation in the course of an active business carried on by the particular corporation in a country other than Canada, the income or loss from which would, if the particular corporation were a foreign affiliate of another corporation and were resident in the country other than Canada in which that active business of the particular corporation is carried on, be included in computing the particular corporation's exempt earnings or exempt loss,

(C) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that, if the non-resident corporation were a foreign affiliate of a corporation, the amounts paid or payable by the non-resident corporation would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(E) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, to the extent that the amounts paid or payable by the other foreign affiliate are deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or a subsequent taxation year,

(H) amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(D) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate (in this clause referred to as the "second affiliate") of the particular corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the amounts paid or payable are on account of interest on borrowed money used for the purpose of earning income from property or interest on an amount payable for property, in respect of a particular period in the year, if

(I) the property is, throughout the particular period, excluded property of the second affiliate that is shares of a corporation (in this clause referred to as the "third affiliate") which is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the particular corporation in respect of which the particular corporation has a qualifying interest or to which the particular corporation is related, and

(II) the second affiliate and the third affiliate are resident in the same designated treaty country for each of their taxation years (each of which is referred to in this subclause as a "relevant taxation year") that end in the year and, in respect of each of the second affiliate and the third affiliate for each relevant taxation year, either

1. the affiliate is subject to income taxation in that country in the relevant taxation year, or

2. the members or shareholders of the affiliate at the end of the relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of the affiliate for the relevant taxation year in their taxation years in which the relevant taxation year ends or would be so subject to income taxation in that country if the affiliate had income for the relevant taxation year and the income of those members or shareholders for

their taxation years in which the relevant taxation year ends consisted only of their share of the income of the affiliate for the relevant taxation year,

where, for the purpose of this clause,

(III) "excluded property" has the meaning that would be assigned by subsection 95(1) of the Act if paragraph (*c*) of the definition "excluded property" in that subsection were read as follows:

"(*c*) property all or substantially all of the income from which is, or would be, if there was income from the property,

(i) income from an active business by reason of paragraph (2)(*a*) if that paragraph were read without reference to its subparagraph (v), and

(ii) income derived from amounts payable by payers who are entitled to deduct the amounts in computing their exempt earnings or exempt loss (as those expressions are defined in Regulations made for the purpose of section 113)," and

(IV) the particular corporation has a qualifying interest in respect of another corporation if the particular corporation has, because of paragraph 95(2)(*m*) or (*m*.1) of the Act, a qualifying interest in respect of that other corporation for the purpose of subdivision i of Division B of Part I of the Act,

(I) if the particular corporation is a life insurance corporation resident in Canada (in this clause referred to as the "insurer"), a corporation controlled by the insurer or a corporation that controls the insurer and the particular affiliate is a foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the particular affiliate's income from an active business for the year because of clause 95(2)(*a*)(ii)(E) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by the insurer in the course of carrying on its life insurance business outside Canada, to the extent that, if the insurer were a foreign affiliate of another corporation resident in Canada and were resident in the country in which the insurer carried on its life insurance business outside Canada, the amounts paid or payable by the insurer would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(J) amounts required to be included in computing the particular affiliate's income from an active business for the year because of subparagraph 95(2)(*a*)(iii) of the Act that are derived from the factoring of trade accounts receivable acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the trade accounts receivable arose in the course of an active business carried on by the non-resident corporation any income from which would be included in computing the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(K) amounts required to be included in computing the particular affiliate's income from an active business for the year because of subparagraph 95(2)(*a*)(iv) of the Act that are derived from loans or lending assets acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the loans or lending assets arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(L) amounts that would be required, because of subparagraph 95(2)(*a*)(v) of the Act, to be included in computing the particular affiliate's income for the year from an active business if that subparagraph were read as follows:

"(v) the income or loss is derived from the disposition of excluded property that is not capital property if

(A) that property is used or held by the particular foreign affiliate for the purpose of gaining or producing income from property that would, because of this paragraph, be included in computing the particular foreign affiliate's income from an active business if this paragraph were read without reference to this subparagraph, and

(B) that income or loss is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that are in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or",

(M) amounts that would be required, because of subparagraph 95(2)(*a*)(vi) of the Act, to be included in computing the particular affiliate's income for the year from an active business if that subparagraph were read as follows:

"(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce its risk, of fluctuations in the value of the denominated currency, with respect to

(A) income or loss, from property, that

(I) would, because of this paragraph, be included in computing the particular foreign affiliate's income or loss from an active business if this paragraph were read without reference to this subparagraph, and

(II) is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or

(B) excluded property the income or loss from which would, if there were income or a loss, be described in clause (A);", or

(8) The portion of the definition "exempt loss" in subsection 5907(1) of the Regulations before paragraph (*a*) is replaced by the following:

"exempt loss", of a foreign affiliate of a particular corporation for a taxation year of the affiliate, is the total of all amounts each of which is

(9) Paragraph (*c*) of the definition "exempt loss" in subsection 5907(1) of the Regulations is replaced by the following:

(*c*) where the year is the 1976 or any subsequent taxation year of the affiliate (referred to in this paragraph as the "particular affiliate") and the particular affiliate is resident in a designated treaty country, each amount that is

(i) the particular affiliate's net loss for the year from an active business carried on by it in Canada or in a designated treaty country, or

(ii) the losses of the particular affiliate for the year from an active business to the extent that they derive from

(A) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of subparagraph 95(2)(*a*)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by a non-resident corporation, to which the particular affiliate and the particular corporation are related throughout the year, in the course of an active business carried on by the non-resident corporation the income or loss from which would, if the non-resident corporation were a foreign affiliate of a corporation, be included in computing the non-resident corporation's exempt earnings or exempt loss,

(B) if the particular corporation is a life insurance corporation resident in Canada throughout the year and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of subparagraph 95(2)(*a*)(i) of the Act that are derived by the particular affiliate from activities that can reasonably be considered to be directly related to business activities carried on by the particular corporation in the course of an active business carried on by the particular corporation in a country other than Canada, the income or loss from which would, if the particular corporation were a foreign affiliate of another corporation and were resident in the country other than Canada in which that active business of the particular corporation is carried on, be included in computing the particular corporation's exempt earnings or exempt loss,

(C) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that, if the non-resident corporation were a foreign affiliate of a corporation, the amounts paid or payable by the non-resident corporation would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(E) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year, to the extent that the amounts paid or payable by the other foreign affiliate are deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a qualifying member of a particular partnership at any time in a fiscal period of the particular partnership that ends in the year, amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(H) amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(D) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by another foreign affiliate (in this clause referred to as the "second affiliate") of the particular corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the amounts paid or payable, in respect of a particular period in the year, are on account of interest on borrowed money used for the purpose of earning income from property or interest on an amount payable for property, if

(I) the property is, throughout the particular period, excluded property of the second affiliate that is shares of a corporation (in this clause referred to as the "third affiliate") and the third affiliate is, throughout the particular period, a foreign affiliate (other than the particular foreign affiliate) of the particular corporation in respect of which the particular corporation has a qualifying interest or to which the taxpayer is related, and

(II) the second affiliate and the third affiliate are resident in the same designated treaty country for each of their taxation years (each of which is referred to in this subclause as a "relevant taxation year") that end in the year and, in respect of each of the second affiliate and the third affiliate for each relevant taxation year of that affiliate, either

1. the affiliate is subject to income taxation in that country in the relevant taxation year, or

2. the members or shareholders of the affiliate at the end of the relevant taxation year are subject to income taxation in that country on, in aggregate, all or substantially all of the income of the affiliate for the relevant taxation year in their taxation years in which that relevant taxation year ends or would be so subject to income taxation in that country if the affiliate had income for the relevant taxation year and the income of those members or shareholders for their taxation years in which the relevant taxation year ends consisted only of their share of income of the affiliate for the relevant taxation year

where, for the purpose of this clause,

(III) "excluded property" has the meaning assigned to that expression for the purpose of clause (*d*)(ii)(H) of the definition "exempt earnings", and

(IV) the particular corporation has a qualifying interest in respect of another corporation if the particular corporation has, because of paragraph 95(2)(*m*) or (*m*.1) of the Act, a qualifying interest in respect of that other corporation for the purpose of subdivision i of Division B of Part I of the Act,

(I) if the particular corporation is a life insurance corporation resident in Canada (in this clause referred to as the "insurer"), a corporation controlled by the insurer or a corporation that controls the insurer and the particular affiliate is a foreign affiliate in respect of which the particular corporation has a qualifying interest throughout the year, amounts required to be included in computing the particular affiliate's loss from an active business for the year because of clause 95(2)(*a*)(ii)(E) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to a partnership of which it is a member by the insurer in the course of carrying on its life insurance business outside Canada, to the extent that, if the insurer were a foreign affiliate of another corporation resident in Canada and were resident in the country in which the insurer carried on its life insurance business outside Canada, the amounts paid or payable by the insurer would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(J) amounts required to be included in computing the particular affiliate's loss from an active business for the year because of subparagraph 95(2)(*a*)(iii) of the Act that are derived from the factoring of trade accounts receivable acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the trade accounts receivable arose in the course of an active business carried on by the non-resident corporation any income from which would be included in computing the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(K) amounts required to be included in computing the particular affiliate's loss from an active business for the year because of subparagraph 95(2)(*a*)(iv) of the Act that are derived from loans or lending assets acquired by the particular affiliate, or by a partnership of which the particular affiliate was a member, from a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year, to the extent that the loans or lending assets arose in the course of an active business carried on by the non-resident corporation any income from which would be included in the exempt earnings of the non-resident corporation if it were a foreign affiliate of a corporation,

(L) amounts that would be required, because of subparagraph 95(2)(*a*)(v) of the Act, to be included in computing the particular affiliate's loss for the year from an active business if that subparagraph were read as follows:

"(v) the income or loss is derived from the disposition of excluded property that is not capital property if

(A) that property is used or held by the particular foreign affiliate for the purpose of gaining or producing income from property that would, because of this paragraph, be included in computing the particular foreign affiliate's income from an active business if this paragraph were read without reference to this subparagraph, and

(B) that income or loss is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or",

(M) amounts that would be required, because of subparagraph 95(2)(*a*)(vi) of the Act, to be included in computing the particular affiliate's loss for the year from an active business if that subparagraph were read as follows:

"(vi) the income or loss is derived by the particular foreign affiliate under or as a result of an agreement that provides for the purchase, sale or exchange of currency and that can reasonably be considered to have been made by the particular foreign affiliate to reduce its risk, of fluctuations in the value of the denominated currency, with respect to

(A) income or loss from property that

(I) would, because of this paragraph, be included in computing the particular foreign affiliate's income or loss from an active business if this paragraph were read without reference to this subparagraph, and

(II) is derived, directly or indirectly, from amounts paid or payable to the particular foreign affiliate by another foreign affiliate of the taxpayer, or by a non-resident corporation related to the particular foreign affiliate and to the taxpayer, that is in respect of an active business carried on in a designated treaty country (as defined for the purpose of Part LIX of the Regulations), or

(B) excluded property the income or loss from which would, if there were income or a loss, be described in clause (A);", or

(10) The definition "exempt loss" in subsection 5907(1) of the English version of the Regulations is amended by replacing the semi-colon at the end of paragraph (*d*) with a comma and adding the following after paragraph (*d*):

minus the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of amounts of losses referred to in subparagraph (*c*)(ii);

(11) The description of A in the formula in the definition "exempt surplus" in subsection 5907(1) of the Regulations is amended by striking out the word "or" at the end of subparagraph (vi), by replacing the word "and" at the end of subparagraph (vii) with the word "or", and by adding the following after subparagraph (vii):

(viii) an amount that is determined under subparagraph 5905(2)(*a*)(iv), (4)(*a*)(iv), (6)(*a*)(iv) or (8)(*a*)(iv) in the period and before the particular time, and

(12) Subparagraph (v) in the description of B in the definition "exempt surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(v) each amount that is determined under subparagraph 5905(2)(*a*)(i), (4)(*a*)(i), (6)(*a*)(i) or (8)(*a*)(i) in the period and before the particular time, or

(13) The definition "loss" in subsection 5907(1) of the Regulations is replaced by the following:

"loss", of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business, means (*a*) in the case of an active business carried on by it in a country, the amount of its loss for the year from the active business carried on in the country computed by applying the provisions of paragraph (*a*) of the definition "earnings" in this subsection respecting the computation of earnings from that active business carried on in that country, with any modifications that the circumstances require, and

(*b*) in any other case, the total of the amounts required by paragraph 95(2)(*a*) of the Act to be included in computing the affiliate's loss from an active business for the year; (*perte*)

(14) Paragraph (*d*) of the definition "net earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(*d*) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which any of subsection 88(3) or paragraphs 95(2)(*c*), (*c*.2), (*d*), (*d*.1), (*e*), (*e*.1), (*e*.3) to (*e*.5) and (*f*.4) of the Act applied), or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's taxable capital gains for the year from those dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of the amount determined under subparagraph (iii); (*gains nets*)

(15) Paragraph (*d*) of the definition "net loss" in subsection 5907(1) of the Regulations is replaced by the following:

(*d*) from dispositions of

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate, or

(ii) partnership interests that were excluded property of the affiliate

is the amount, if any, by which

(iii) the portion of the affiliate's allowable capital losses for the year from those dispositions that can reasonably be considered to have accrued after its 1975 taxation year

exceeds

(iv) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax refunded in respect of the amount determined under subparagraph (iii); (*perte nette*)

(16) Paragraph (*b*) of the definition "taxable deficit" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vi) of the description of A in that definition;

(17) Subparagraph (*b*)(v) of the definition "taxable earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(v) the affiliate's net earnings for the year from dispositions of shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which any of subsection 88(3) or paragraphs 95(2)(*c*), (*c*.2), (*d*), (*d*.1), (*e*), (*e*.1), (*e*.3) to (*e*.5) and (*f*.4) of the Act applied) or dispositions of partnership interests that were excluded property of the affiliate,

(18) Paragraph (*b*) of the definition "taxable loss" in subsection 5907(1) of the Regulations is amended by adding the following after subparagraph (i):

(i.1) the affiliate's net loss for the year in respect of losses included in computing income from an active business because of subparagraphs 95(2)(*a*)(v) and (vi) of the Act,

(19) Paragraph (*b*) of the definition "taxable loss" in subsection 5907(1) of the Regulations is amended by striking out the word "or" at the end of subparagraph (iii), and by replacing subparagraph (iv) with the following:

(iv) the affiliate's net loss for the year from the disposition of shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate or from the disposition of partnership interests that were excluded property of the affiliate, or

(v) to the extent that they have not otherwise been included under subparagraph (i) or deducted in computing an amount under subparagraph (*b*)(i) of the definition "taxable earnings", the loss for the year as determined under paragraph (*b*) of the definition "loss" minus the portion of any income or profits tax refunded by the government of a country for the year that can reasonably be regarded as tax refunded in respect of that loss,

(20) The description of A in the formula in the definition "taxable surplus" in subsection 5907(1) of the Regulations is amended by replacing the word "and" at the end of subparagraph (v) with the word "or" and by adding the following after subparagraph (v):

(vi) each amount that is determined under subparagraph 5905(2)(*a*)(v), (4)(*a*)(v), (6)(*a*)(v) or (8)(*a*)(v) in the period and before that particular time, and

(21) Subparagraph (v) of the description of B in the formula in the definition "taxable surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(v) each amount that is determined under subparagraph 5905(2)(*a*)(ii), (4)(*a*)(ii), (6)(*a*)(ii) or (8)(*a*)(ii) in the period and before the particular time, or

(22) Subparagraph (iii) in the description of B in the definition "underlying foreign tax" in subsection 5907(1) of the Regulations is replaced by the following:

(iii) each amount that is required by subparagraph 5905(2)(*a*)(iii), (4)(*a*)(iii), (6)(*a*)(iii) or (8)(*a*)(iii) to be deducted in the period and before the particular time in computing the subject affiliate's underlying foreign tax, or

(23) Paragraph (*b*) of the definition "whole dividend" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) where a whole dividend is deemed by paragraph 5902(1)(*g*) to have been paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of that paragraph, the whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate, and

(24) Subparagraph 5907(1.1)(*b*)(ii) of the Regulations is replaced by the following:

(ii) an amount is paid by the primary affiliate to a secondary affiliate in respect of a reduction or refund because of a loss or a tax credit of the secondary affiliate for a taxation year of the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group,

(A) in respect of the primary affiliate,

(I) the portion of the amount so paid that can reasonably be regarded as relating to an amount deducted from the exempt surplus or included in the exempt deficit, as the case may be, of the secondary affiliate shall at the end of the year to which the loss or the tax credit relates be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the primary affiliate, and

(II) the portion of the amount so paid that can reasonably be regarded as relating to an amount deducted from the taxable surplus or included in the taxable deficit, as the case may be, of the secondary affiliate shall at the end of the year to which the loss or the tax credit relates be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the primary affiliate and be added to the underlying foreign tax of the primary affiliate, and

(B) in respect of the secondary affiliate, the amount is deemed to be a refund to the secondary affiliate for the year to which the loss or the tax credit relates of income or profits tax in respect of the loss or the tax credit,

(25) Paragraph 5907(2)(*f*) of the Regulations is replaced by the following:

(*f*) any revenue, income or profit (other than an amount referred to in paragraph (*f*.1), (*h*), or (*i*)) of the affiliate derived in the year from such business carried on in that country to the extent that such revenue, income or profit is not otherwise required to be included in computing the earnings amount of the affiliate for any taxation year by the income tax law that is relevant in computing the earnings amount, and

(26) Section 5907 of the Regulations is amended by adding the following after subsection 5907(2):

(2.01) Notwithstanding any other provision of the Regulations, in determining the earnings of a foreign affiliate of a corporation resident in Canada

(*a*) that are derived from a disposition to which any of subsection 88(3) and paragraphs 95(2)(*c*.2), (*d*), (*d*.1), (*e*), (*e*.1), (*e*.3) to (*e*.5) and (*f*.4) of the Act applies, those earnings are to be determined using the rules in those paragraphs; and

(*b*) from a disposition of property acquired in a transaction to which any of subsection 88(3) and paragraphs 95(2)(*c*.2), (*d*), (*d*.1), (*e*), (*e*.1), (*e*.3) to (*e*.5) and (*f*.4) of the Act applies, the cost to the foreign affiliate of the property is to be determined using the rules in those paragraphs.

(27) Subsection 5907(2.7) of the Regulations is replaced by the following:

(2.7) Notwithstanding any other provision of this Part, if an amount is included in computing the income or loss from an active business of a particular foreign affiliate of a taxpayer for a particular taxation year under paragraph 95(2)(*a*) of the Act and is in respect of a particular amount paid or payable (other than an amount paid or payable described in clause 95(2)(*a*)(ii)(D) of the Act) by another non-resident corporation described in paragraph 95(2)(*a*) of the Act or by a partnership of which such a corporation is a member, the particular amount is to, except where it has been deducted under paragraph (2)(*j*) in computing the other non-resident corporation's earnings or loss from an active business, be deducted in computing the earnings or loss of the other non-resident corporation or the partnership, as the case may be, from the active business for its earliest taxation year in which the particular amount was paid or payable. The particular amount may not be deducted in computing its earnings or loss from the active business for any other taxation year.

(28) Subsections 5907(2.8) and (2.9) of the Regulations are replaced by the following:

(2.8) Subsection (2.81) applies, in respect of a particular amount of interest, to the specified foreign affiliates of a corporation resident in Canada, if

(*a*) an amount in respect of the particular amount of interest is included, because of clause 95(2)(*a*)(ii)(D) of the Act, in computing the income or loss for a particular taxation year from an active business of a particular foreign affiliate of the corporation resident in Canada or a particular foreign affiliate of a person related to that corporation; and

(*b*) the particular amount of interest is an amount of interest paid or payable to the particular foreign affiliate, by another foreign affiliate (in this subsection and in subsections (2.81) to (2.83) referred to as the "second affiliate") of the corporation resident in Canada to which the particular foreign affiliate and the corporation resident in Canada are related, under a legal obligation to pay interest on borrowed money used for the purpose of earning income from property, or on an amount payable for property acquired for the purpose of gaining or producing income from property, and

(i) the property is excluded property of the second affiliate that is shares of the third affiliate referred to in subclause 95(2)(*a*)(ii)(D)(III) of the Act (which third affiliate is referred to in this subsection and in subsections (2.81) to (2.83) as the "third affiliate"), and

(ii) the requirements set out in subclauses 95(2)(*a*)(ii)(D)(IV) and (V) of the Act are satisfied in respect of the second and third affiliates for their respective applicable taxation years.

(2.81) If this subsection applies, in respect of the particular amount of interest, to the specified foreign affiliates of the corporation resident in Canada, the following rules apply:

(*a*) where the specified foreign affiliate is the second affiliate, the particular amount is to be deducted in computing the second affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the second affiliate, to the extent of the second affiliate's available exempt surplus amount in respect of the applicable taxation year of the second affiliate;

(*b*) where the specified foreign affiliate is the third affiliate, there is to be deducted in computing the third affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the third affiliate, the lesser of the third affiliate's available exempt surplus amount in respect of its applicable taxation year and the amount determined by the formula

$$(A - B) \times C$$

where

A is the particular amount of interest,

B is the amount deducted because of paragraph (*a*) in computing the second affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the second affiliate, and

C is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the third affiliate, in respect of the applicable taxation year of the second affiliate;

(*c*) where the specified foreign affiliate is a group foreign affiliate, there is to be deducted, in computing the group foreign affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the group foreign affiliate, the lesser of the group foreign affiliate's available exempt surplus in respect of its applicable taxation year and the amount determined by the formula

$$(A - B - C) \times D$$

where

A is the particular amount of interest,

B is the amount deducted because of paragraph (*a*) in computing the second affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the second affiliate,

C is the amount determined when the amount deducted because of paragraph (*b*) in computing the third affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the applicable taxation year of the third affiliate is divided by the amount determined for C in the formula in paragraph (*b*) in respect of the third affiliate, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the specified foreign affiliate of the corporation resident in Canada, in respect of the applicable taxation year of the second affiliate;

(*d*) amounts in respect of the particular amount of interest must be deducted under paragraphs (*a*) to (*c*) in computing the exempt surplus in respect of the corporation resident in Canada of the specified foreign affiliates of the corporation resident in Canada at the end of each of their applicable taxation years to the extent of the total of all amounts each of which is the available exempt surplus amount of a specified foreign affiliate of the corporation resident in Canada in respect of that specified foreign affiliate's applicable taxation year;

(*e*) paragraph (*a*) is to be applied to the second affiliate before paragraph (*b*) is applied to the third affiliate and paragraph (*b*) is to be applied to the third affiliate before paragraph (*c*) is applied to a group foreign affiliate of the corporation resident in Canada; and

(*f*) there is to be added in computing the exempt deficit in respect of the corporation resident in Canada of the second affiliate the amount determined by the formula:

$$K - (L + M + N)$$

where

K is the particular amount of interest,

L is the amount determined under paragraph (*a*) in respect of the particular amount of interest in respect of the second affiliate,

M is the amount determined when the amount determined under paragraph (*b*) in respect of the particular amount of interest in respect of the third affiliate is divided by the amount determined for C in the formula in that paragraph, and

N is the amount determined when the amount determined under paragraph (*c*) in respect of the particular amount of interest in respect of the group foreign affiliate is divided by the amount determined for D in the formula in that paragraph.

(2.82) In computing the second affiliate's income or loss for a taxation year from any source, no amount may be deducted in respect of an amount paid or payable by it that is referred to in paragraph (2.81)(*a*).

(2.83) The following definitions apply in this subsection and subsections (2.8) to (2.82).

"applicable taxation year", of a specified foreign affiliate of the corporation resident in Canada, means the last taxation year of the specified foreign affiliate that ends in the particular taxation year of the particular foreign affiliate referred to in paragraph (2.8)(*a*). (*l'année d'imposition applicable*)

"available exempt surplus amount", of a specified foreign affiliate of the corporation resident in Canada in respect of the applicable taxation year of the specified foreign affiliate, means the amount determined by the formula

$$(A + B + C) - (D + E + F + G)$$

where

A is the total of all amounts each of which is the portion of the specified foreign affiliate's income, for its applicable taxation year, from an active business that is included in computing the exempt earnings of the specified foreign affiliate in respect of the corporation resident in Canada,

B is the specified foreign affiliate's exempt surplus in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year,

C is the total of all amounts each of which is the portion of any dividend received in the applicable taxation year, by the specified foreign affiliate from another foreign affiliate of the corporation resident in Canada, that is prescribed by paragraph 5900(1)(*a*) to have been paid out of that other affiliate's exempt surplus in respect of the corporation resident in Canada,

D is the total of all amounts each of which is the portion of the specified foreign affiliate's loss, for its applicable taxation year, from an active business that is included in computing the exempt loss of the specified foreign affiliate in respect of the corporation resident in Canada,

E is the specified foreign affiliate's exempt deficit in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year,

F is the specified foreign affiliate's taxable deficit in respect of the corporation resident in Canada at the end of the specified foreign affiliate's taxation year that immediately precedes its applicable taxation year, and

G is the total of all amounts each of which is the portion of any dividend paid in the applicable taxation year by the specified foreign affiliate that is prescribed by paragraph 5900(1)(*a*) to have been paid out of its exempt surplus in respect of the corporation resident in Canada. (*montant disponible de surplus exonéré*)

"group foreign affiliate", at any time of a corporation resident in Canada, means any of its foreign affiliates (other than the second affiliate and the third affiliate) in which the second affiliate has, at that time, an equity percentage. (*société étrangère affiliée connexe*) "specified adjustment factor", in respect of the corporation resident in Canada, in respect of a specified foreign affiliate of the corporation resident in Canada, in respect of the applicable taxation year of the second affiliate, means the amount determined by the formula

$$A/B$$

where

A is the surplus entitlement percentage of the corporation resident in Canada in respect of the second affiliate, immediately before the end of the applicable taxation year of the second affiliate, and

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the specified foreign affiliate, immediately before the end of the applicable taxation year of the second affiliate. (*facteur de rajustement*)

"specified foreign affiliate", of a corporation resident in Canada, means any foreign affiliate of the corporation that, at the end of the particular taxation year referred to in paragraph (2.8)(*a*), is

(*a*) the second affiliate;

(*b*) the third affiliate; or

(*c*) another corporation that is

(i) if there is only one group foreign affiliate of the corporation resident in Canada at the end of that particular taxation year, that group foreign affiliate, or

(ii) if there is more than one group foreign affiliate of the corporation resident in Canada at the end of that particular taxation year, the group foreign affiliate of the corporation resident in Canada with the greatest available exempt surplus amount for the applicable taxation year of that group foreign affiliate. (*société étrangère affiliée determinée*)

(2.9) If paragraph 95(2)(*k*.1) of the Act applies in respect of a particular taxation year of a foreign affiliate of a taxpayer or in respect of a particular fiscal period of a partnership at the end of which a foreign affiliate of a taxpayer is a member of the partnership (which foreign affiliate or partnership is referred to in this subsection as the "operator" and which particular taxation year or particular fiscal period is referred to in this subsection as the "specified taxation year"), in computing the affiliate's earnings or loss from the foreign business referred to in that paragraph or from the disposition of property used or held in the course of carrying on the foreign business referred to in that paragraph (which foreign business is referred to in this subsection as the "foreign business") for the affiliate's taxation year (which taxation year is referred to in paragraphs (*a*) and (*b*) as the "preceding taxation year") that is the affiliate's preceding taxation year referred to in paragraph 95(2)(*k*) of the Act or that is the affiliate's taxation year in which the preceding fiscal period referred to in paragraph 95(2)(*k*) of the Act ended, as the case may be,

(*a*) there shall be added to the amount determined under paragraph (*a*) of the definition "earnings" in subsection (1), after adjustment in accordance with subsections (2) to (2.2),

(i) where the operator is the affiliate, the total of

(A) the amount, if any, by which the total determined under subclause (*b*)(i)(A)(II) in respect of the operator for the preceding taxation year exceeds the total determined under subclause (*b*)(i)(A)(I) in respect of the operator for that year,

(B) if the operator was deemed because of paragraphs 95(2)(*k.1*) and 138(11.91)(*e*) of the Act to have, at the end of the preceding taxation year, disposed of property owned by it that was used or held by it in the course of carrying on the foreign business in that year, the total of all amounts each of which is the amount, if any, by which

(I) the lesser of the fair market value and the cost to the operator immediately before the end of that year of a capital property (referred to in this subclause and in subclause (II) as a "particular depreciable asset") owned by it that

1. was used or held by it in the course of carrying on the foreign business in that year,

2. was deemed because of paragraphs 95(2)(k.1) and 138(11.91)(*e*) of the Act to have been disposed of at the end of that year, and

3. was property in respect of the cost of which amounts were, at any time, deductible in computing the operator's income or loss for the purpose of computing the affiliate's earnings or loss from the foreign business under paragraph (*a*) of the definition "earnings", or under paragraph (*a*) of the definition "loss", in subsection (1)

exceeds

(II) the amount, if any, by which the cost to the operator immediately before the end of that year of the particular depreciable asset exceeds the total of all amounts each of which is an amount that can reasonably be regarded as having been deducted in respect of the cost of the particular depreciable asset in computing the operator's income or loss for the purpose of computing the earnings or loss (determined without reference to this subsection) of the affiliate from the foreign business in any taxation year preceding the specified taxation year of the affiliate in which it was a foreign affiliate of the corporation or of another corporation resident in Canada with which the corporation was not dealing at arm's length at any time, and

(C) if the operator was deemed because of paragraphs 95(2)(*k*.1) and 138(11.91)(*e*) of the Act to have, at the end of the preceding taxation year, disposed of property owned by it that was used or held by it in the course of carrying on the foreign business in that year, the total of all amounts each of which is the amount, if any, by which the fair market value, immediately before the end of that year, of each property (other than capital property, eligible capital property or resource property) deemed because of those paragraphs to have been disposed of exceeds the cost to the operator of the property at that time,

(D) if the operator was deemed because of paragraphs 95(2)(*k*.1) and 138(11.91)(*e*) of the Act to have, at the end of the preceding taxation year, disposed of eligible capital property, the amount, if any, required by subsection 14(1) of the Act to be included in computing the operator's income for that year from the foreign business, and

(E) if the operator was deemed because of paragraphs 95(2)(*k*.1) and 138(11.91)(*e*) of the Act to have, at the end of the preceding taxation year, disposed of resource property, the amount, if any, by which

(I) the total of all amounts included by subsection 59(1) or paragraph 59(3.2)(*c*) or (*c*.1) of the Act in computing the operator's income for that year from the foreign business

exceeds

(II) the total of all amounts that were deductible under section 66, 66.1, 66.2, 66.21 or 66.4 of the Act in computing the operator's income for that year from the foreign business, and

(ii) where the operator is the partnership, the proportion of the total determined under subparagraph (i) that the affiliate's share of the partnership's income or loss for the preceding taxation year is of the partnership's income or loss for that year but, for the purpose of this subparagraph, if both the income and loss of the partnership for the preceding taxation year are nil, that proportion is to be determined as if the partnership had income for that year in the amount of $1,000,000; and

(*b*) there shall be added to the amount determined under paragraph (*a*) of the definition "loss" in subsection (1)

(i) where the operator is the affiliate, the total of

(A) the amount, if any, by which

(I) the total of all amounts each of which is an amount deemed because of paragraphs 95(2)(*k*.1) and 138(11.91)(*d*) of the Act to have been claimed under paragraph 20(1)(*l*), 20(1)(*l*.1) or 20(7)(*c*), or subparagraph 138(3)(*a*)(i), (ii) or (iv), of the Act (each of which provisions is referred to in this subparagraph as a "reserve provision") in computing the income from the foreign business for the preceding taxation year

exceeds

(II) the total of all amounts each of which is an amount actually claimed by the operator as a reserve in computing its income from the foreign business for that year that can reasonably be considered to be in respect of amounts in respect of which a reserve could have been claimed under a reserve provision on the assumption that the operator could have claimed amounts in respect of the reserve provisions for that year,

(B) the total of all amounts each of which is the amount, if any, by which the amount determined under subclause (*a*)(i)(B)(II) in respect of a particular depreciable asset described in subclause (*a*)(i)(B)(I) exceeds the fair market value, at the end of the preceding taxation year, of the particular depreciable asset,

(C) if the operator was deemed because of paragraphs 95(2)(*k*.1) and 138(11.91)(*e*) of the Act to have, at the end of the preceding taxation year, disposed of property owned by it that was used or held by it in the course of carrying on the foreign business in that year, the total of all amounts each of which is the amount, if any, by which the cost to the operator, immediately before the end of that year, of each property (other than capital property, eligible capital property or resource property) deemed because of those paragraphs to have been disposed of exceeds the fair market value of the property at the end of that year,

(D) if the operator was, because of paragraphs 95(2)(*k*.1) and 138(11.91)(*e*) of the Act, deemed to have, at the end of the preceding taxation year, disposed of eligible capital property, the amount, if any, that would be permitted by paragraph 24(1)(*a*) of the Act to be deducted in computing the operator's income for that year from the foreign business if the operator had, immediately before the end of that year, ceased to carry on the foreign business, and

(E) the amount, if any, by which the total determined in respect of the operator in subclause (*a*)(i)(E)(II) for the preceding taxation year exceeds the total determined in respect of the operator in subclause (*a*)(i)(E)(I) for that year, and

(ii) where the operator is the partnership, the proportion of the total determined under subparagraph (i) that the affiliate's share of the income or loss of the partnership for the preceding taxation year is of the income or loss of the partnership for that year but, for the purpose of this subparagraph, if both the income and loss of the partnership for the preceding taxation year are nil, that proportion is determined as if the partnership had income for that year in the amount of $1,000,000.

(2.91) Any property of a foreign affiliate of a corporation resident in Canada, or of a partnership of which a foreign affiliate of a corporation resident in Canada is a member, that is, for the purposes of subdivision i of Division B of Part I of the Act, deemed because of either paragraph 95(2)(*k*.1) or (*k*.3), and paragraph 138(11.91)(*e*), of the Act to have been disposed of and reacquired by the affiliate or the partnership, as the case may be, is, for the purpose of this section, deemed to have been disposed of and reacquired by the affiliate or the partnership, as the case may be, in the same manner and for the same amounts as if those provisions applied for the purpose of this section.

(29) Subsection 5907(5.1) of the Regulations is repealed.

(30) Subsection 5907(9) of the Regulations is replaced by the following:

(9) If a foreign affiliate of the taxpayer resident in Canada has been liquidated and dissolved (otherwise than as a result of a foreign merger

within the meaning assigned by subsection 87(8.1) of the Act), subject to subsection 88(3) and to paragraphs 95(2)(*e*) and (*e*.1) of the Act

(*a*) where at a particular time in the course of the liquidation and dissolution, the fair market value of the property that has been disposed of by the affiliate in the course of the liquidation and dissolution equals or is more than 90% of the fair market value of the property that was owned by the affiliate, immediately before the commencement of the liquidation and the dissolution, the taxation year of the affiliate that would have included the particular time is deemed to have ended immediately before that time; and

(*b*) each property of the affiliate that was distributed or disposed of by the affiliate in the course of the liquidation and the dissolution is deemed

(i) to have been disposed of by the affiliate for proceeds of disposition equal to the fair market value of the property, immediately before it was distributed or disposed of, and

(ii) to have been acquired by the person or partnership to whom the affiliate distributed or disposed of the property at a cost equal to the affiliate's proceeds of disposition of the property.

(9.1) Subject to subsection (9) and to subsection 88(3) of the Act and paragraphs 95(2)(*d*) to (*e*.6) of the Act, if a foreign affiliate of a taxpayer resident in Canada has, as a payment of a dividend or as a distribution of a property, transferred a property to a shareholder of the affiliate (or to a person with whom the shareholder was not dealing at arm's length),

(*a*) the property of the affiliate that was so transferred is deemed

(i) to have been disposed of by the affiliate for proceeds of disposition equal to the fair market value of the property, immediately before it was so transferred, and

(ii) to have been acquired by the person or partnership to whom the affiliate transferred the property at a cost equal to the affiliate's proceeds of disposition of the property; and

(*b*) the amount, in respect of the property, of the dividend or distribution made by the affiliate to the person to whom the property was transferred is deemed to be equal to the affiliate's proceeds of disposition of the property.

(31) Paragraph 5907(13)(*a*) of the Regulations is replaced by the following:

(*a*) the taxable surplus of the affiliate in respect of the taxpayer at the end of the year (other than the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income), minus the amount, if any, that would have been added to the underlying foreign tax of the affiliate in respect of the taxpayer, if each disposition deemed by paragraph 128.1(1)(*b*) of the Act had been an actual disposition, and that is not otherwise included in the underlying foreign tax of the affiliate,

(32) Section 5907 of the Regulations is amended by adding the following after subsection (13):

(14) For the purpose of subsection (13), the amount that would have been added to the underlying foreign tax of the affiliate in respect of the taxpayer at the end of the year if each disposition deemed by paragraph 128.1(1)(*b*) of the Act had been an actual disposition is deemed to be nil if, had the taxpayer realized a gain from such an actual disposition, that gain would not have been taxable in any country other than Canada.

4. The Regulations is amended by adding the following after section 5910:

5911. (1) The amount prescribed for the purpose of paragraph 92(1.3)(*a*) of the Act, in respect of a relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

(*a*) the amount, if any, by which the fair market value of the relevant share, at the election time, exceeds the adjusted cost base, at the time of the disposition, of the relevant share to the holder, and

(*b*) the amount determined by the following formula

$$A/C \times (C - B)$$

where

A is the amount that would, if the relevant share was the disposed share and the relevant affiliate was the disposed affiliate in respect of the specified section 93 election, be determined under paragraph 5902(1)(*f*) to be the attributed net surplus in respect of the relevant share in respect of the specified section 93 election,

B is the amount that would be determined under subparagraph 5907(1)(*e*)(vi) to be the consolidated net surplus in respect of the relevant affiliate, if

(i) the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1),

(ii) the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of, immediately following the disposition of the disposed shares to which the specified section 93 election applied, and

(iii) before that determination, in respect of the relevant foreign affiliate and each foreign affiliate of the particular corporation resident in Canada in which the relevant foreign affiliate had an equity percentage, the adjustments that are required by section 5905 to be made, in respect of the whole dividend referred to in paragraph 5902(1)(*g*) in respect of the specified section 93 election were made, and

C is the amount that would be determined under subparagraph 5902(1)(*e*)(vi) to be the consolidated net surplus in respect of the relevant affiliate in respect of the specified section 93 election, if the relevant foreign affiliate was the disposed foreign affiliate referred to in subsection 5902(1) and the relevant share was the disposed share referred to in subsection 5902(1).

(2) The amount prescribed for the purpose of paragraph 92(1.3)(*b*) of the Act, in respect of a relevant share referred to in that paragraph, in respect of a relevant specified section 93 election related to the relevant share, is the lesser of

(*a*) the amount, if any, by which the adjusted cost base, at the time of the disposition, of the relevant share to the holder exceeds the fair market value of the relevant share, at the election time, and

(*b*) the amount determined by the following formula

$$A/C \times (C - B)$$

where

A is the amount that would be determined to be the attributed net surplus in respect of the relevant share under paragraph 5902(1)(*f*) in respect of the specified section 93 election, if

(i) the relevant share was the disposed share, and the relevant foreign affiliate was the disposed foreign affiliate, in respect of the specified section 93 election, and

(ii) the consolidated net surplus in respect of the relevant foreign affiliate was the amount, if any, determined, in respect of the relevant foreign affiliate, under the description of C,

B is the amount, if any, by which the total that would be determined under clause 5902(1)(*e*)(vi)(B) exceeds the total that would be determined under clause 5902(1)(*e*)(vi)(A), in respect of the relevant foreign affiliate, if

(i) the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1),

(ii) the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of immediately following the disposition of the disposed shares to which the specified section 93 election applied, and

(iii) before that determination, in respect of the relevant foreign affiliate and each foreign affiliate of the particular corporation resident in Canada in which the relevant foreign affiliate had an equity percentage, the adjustments that are required by section 5905 to be made, in respect the whole dividend referred to in paragraph 5902(1)(*g*) in respect of the specified section 93 election, were made, and

C is the amount, if any, by which the total that would be determined under clause 5902(1)(*e*)(vi)(B) exceeds the total that would be determined under clause 5902(1)(*e*)(vi)(A), in respect of the relevant affiliate in respect of the specified section 93 election, if the relevant foreign affiliate was the disposed foreign affiliate referred to in subsection 5902(1) and the relevant share was the disposed share referred to in subsection 5902(1).

(3) If the amount determined in each of the formulae in paragraphs (1)(*b*) and (2)(*b*) in respect of the relevant share referred to in paragraph 92(1.3)(*a*) of the Act is nil, the amount determined for B in the formula in paragraph (1)(*b*) in respect of the relevant affiliate is greater than nil and the amount determined for C in the formula in paragraph (2)(*b*) in respect of the relevant affiliate is greater than nil, the amount prescribed for the purpose of paragraph 92(1.3)(*a*) of the Act, in respect of the relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

(*a*) the amount, if any, by which the fair market value of the relevant share, at the election time, exceeds the adjusted cost base, at the time of the disposition, of the relevant share to the holder, and (*b*) the amount that would, if the relevant share was the disposed share and the relevant affiliate was the disposed affiliate in respect of the specified section 93 election, be determined under paragraph 5902(1)(*f*) to be the attributed net surplus in respect of the relevant share if the consolidated net surplus of the relevant foreign affiliate were the amount determined for B in the formula in paragraph (1)(*b*).

5912. (1) The amount prescribed, for the purpose of paragraph 95(2)(*c*.3) of the Act, to be the adjusted suspended gain in respect of the specified share, of the relevant foreign affiliate referred to in that paragraph, at the earlier of the first times (referred to in this section as the "recognition time"), after the original disposition time, that is described by that paragraph, is the amount determined by the formula

$$A \text{ x } B/C$$

where

A is the amount of the unadjusted suspended gain in respect of a specified share of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

(2) The amount prescribed, for the purpose of paragraph 95(2)(*c*.3) of the Act, to be the adjusted allocable tax in respect of the adjusted suspended gain in subsection (1) in respect of the specified share, of the relevant foreign affiliate referred to in that paragraph, at the recognition time, is the amount determined by the formula

$$A \text{ x } B/C$$

where

A is any income or profits tax paid to the government of a country by the relevant foreign affiliate that can reasonably be regarded as tax in respect of the unadjusted suspended gain in respect of the specified share, B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

5913. (1) The amount prescribed, for the purpose of paragraph 95(2)(*f*.5) of the Act, to be the adjusted suspended income or gain in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the earlier of the first times (referred to in this section as the "recognition time"), after the original disposition time, that is described by that paragraph, is the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the unadjusted suspended income or gain in respect of a specified property of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

(2) The amount prescribed, for the purpose of paragraph 95(2)(*f*.5) of the Act, to be the adjusted allocable tax in respect of the adjusted suspended income or gain in subsection (1) in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the recognition time, is the amount determined by the formula

$$A \times B/C$$

where

A is any income or profits tax paid to the government of a country by the relevant foreign affiliate that can reasonably be regarded as tax in respect of the unadjusted suspended income or gain in respect of the specified property,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

5914. (1) The amount prescribed, for the purpose of paragraph 95(2)(*h*.2) of the Act, to be the adjusted suspended loss or capital loss in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the earlier of the first times (referred to in this section as the "recognition time"), after the original disposition time, that is described by that paragraph, is the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the unadjusted suspended loss or capital loss in respect of a specified property of the relevant foreign affiliate at the original disposition time,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

(2) The amount prescribed, for the purpose of paragraph 95(2)(*h*.2) of the Act, to be the adjusted allocable tax refund in respect of the adjusted suspended loss or capital loss in subsection (1) in respect of the specified property, of the relevant foreign affiliate referred to in that paragraph, at the recognition time, is the amount determined by the formula

$$A \times B/C$$

where

A is any income or profits tax refunded by the government of a country to the relevant foreign affiliate that can reasonably be regarded as tax refunded in respect of the unadjusted suspended loss or capital loss in respect of the specified property,

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the original disposition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time, and

C is the surplus entitlement percentage of the corporation resident in Canada in respect of the relevant foreign affiliate immediately before the recognition time determined on the assumption that the taxation year of the relevant foreign affiliate that would otherwise have included that time had ended immediately before that time.

5915. An election under paragraph 95(2)(*c*.2) of the Act in respect of the disposition of a specified share is to be made by filing the prescribed form with the Minister, on or before

(*a*) if a foreign affiliate of the particular corporation resident in Canada was the vendor that disposed of the specified share, the particular corporation's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and

(*b*) if a foreign affiliate of the particular corporation resident in Canada is a member of a partnership that was the vendor that disposed of the specified share, the particular corporation's filing-due date for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period in which the disposition was made.

5916. An election under clause 95(2)(*d*)(iii)(A), (*e*)(v)(B), (*e*.3)(iv)(B), (*e*.4)(v)(B) or (*e*.5)(v)(B) of the Act in respect of the disposition of one or more shares of the capital stock of a foreign affiliate of a corporation resident in Canada is to be made by filing the prescribed form with the Minister, on or before

(*a*) if a foreign affiliate of the corporation resident in Canada made the disposition, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and

(*b*) if a foreign affiliate of the corporation resident in Canada is a member of a partnership that made the disposition, the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the taxation year of the foreign affiliate that includes the last day of the partnership's fiscal period in which the disposition was made.

5917. An election under paragraph 95(2)(*f*.4) of the Act is to be made by filing the prescribed form with the Minister, on or before

(*a*) if a foreign affiliate of the particular corporation resident in Canada was the vendor that disposed of the specified property, the particular corporation's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year in which the disposition was made; and

(*b*) if a foreign affiliate of the particular corporation resident in Canada is a member of a partnership that was the vendor that disposed of the specified property, the particular corporation's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that includes the last day of the partnership's fiscal period in which the disposition was made.

5918. An election under subparagraph 95(2)(*k*.3)(iii) of the Act in respect of the dispositions of all properties deemed, by subparagraph 95(2)(*k*.3)(ii) of the Act and paragraph 138(11.91)(*e*) of the Act, to have been disposed of by the operator referred to in subparagraph 95(2)(*k*.3)(iii) of the Act in the operator's specified taxation year referred to in that subparagraph, is to be made by filing the prescribed form with the Minister on or before

(*a*) if a foreign affiliate of the taxpayer was the operator, the taxpayer's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that is the specified taxation year; and

(*b*) if a partnership — of which a foreign affiliate of the taxpayer was, or was deemed by paragraph 95(2)(*k*.7) of the Act to be, a member — was the operator, the taxpayer's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that includes the last day of the partnership's fiscal period that is the specified taxation year.

5919. An election under paragraph 88(3)(*a*) of the Act in respect of the disposition of one or more shares of the capital stock of the foreign affiliate of a corporation resident in Canada by another foreign affiliate of the corporation resident in Canada is to be made by filing the prescribed form with the Minister on or before the filing-due date of the corporation resident in Canada for its taxation year that includes the last day of the other foreign affiliate's taxation year in which the other foreign affiliate made the disposition.

Coming-into-force

5. Section 1 applies in respect of elections made under subsection 93(1) or (1.2) of the *Income Tax Act* in respect of dispositions that occur after December 20, 2002 other than elections made pursuant to dispositions required to be made under an agreement in writing made by a vendor on or before December 20, 2002, except that

(*a*) if an election has been made by a taxpayer under subsection 93(1) or (1.2) of the *Income Tax Act* in respect of a disposition that occurs after December 20, 2002 and on or before ANNOUNCEMENT DATE (other than a disposition required to be made under an agreement in writing made by a vendor on or before December 20, 2002) and the taxpayer has made a valid election under subsection 133(40) of the *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE,

(i) section 1 does not apply in respect of the taxpayer in respect of the disposition, and

(ii) the Regulations are, in respect of the taxpayer in respect of that election, to be read as though section 5902 of the Regulations contained a subsection (6.1) that reads as follows:

"(6.1) If an election under subsection 93(1) or (1.2) of the Act is made at any time by a particular corporation resident in Canada in respect of a share of the capital stock of a foreign affiliate (in this subsection referred to as the "particular affiliate") of the particular corporation that is disposed of to the particular corporation, to another corporation resident in Canada with which the particular corporation does not deal at arm's length or to another foreign affiliate of the particular corporation, the amount of the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit, underlying foreign tax and net surplus in respect of the particular corporation at that time is to be determined under paragraph (1)(*a*) as if the amount of any dividend referred to in subparagraph (1)(*a*)(i) or (ii) were nil.";

(*b*) section 1 does not apply in respect of a taxpayer in respect of an election made by the taxpayer under subsection 93(1) or (1.2) of the *Income Tax Act* in respect of a disposition (other than a disposition required to be made under an agreement in writing made by a vendor on or before December 20, 2002) that occurs after December 20, 2002 and on or before ANNOUNCEMENT DATE, if

(i) the taxpayer has not made a valid election under subsection 133(40) of the *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE, and

(ii) none of paragraphs 88(3)(*a*), as enacted by subsection 130(2) of those Legislative Proposals, and 95(2)(*c*.2) and 95(2)(*d*) to (*e*.5), as enacted by subsection 133(11) of those Legislative Proposals, of the *Income Tax Act* applies to the disposition; and

(*c*) section 1 does not apply in respect of a taxpayer in respect of an election made by the taxpayer under subsection 93(1) or (1.2) of the *Income Tax Act* in respect of a disposition that occurs after ANNOUNCEMENT DATE, if

(i) the disposition is made under an agreement in writing made by a vendor on or before ANNOUNCEMENT DATE, and

(ii) none of paragraphs 88(3)(*a*), as enacted by subsection 130(2) of those Legislative Proposals, and 95(2)(*c*.2) and 95(2)(*d*) to (*e*.5), as enacted by subsection 133(11) of those Legislative Proposals, of the *Income Tax Act* applies to the disposition; and

6. (1) Subsection 5905(1) of the Regulations, as enacted by subsection 2(1), applies in respect of acquisitions that occur after ANNOUNCEMENT DATE.

(2) Subsection 5905(2) of the Regulations, as enacted by subsection 2(1), and subsections 2(2), (3), (5), (7) and (8) apply in respect of dispositions in respect of which an election was made in respect of which section 1 applies.

(3) Subsection 2(4) applies in respect of amalgamations that occur, and windings-up that begin, after December 20, 2002.

(4) Subsection 2(6) applies in respect of dissolutions that occur after December 20, 2002.

7. (1) Subsection 3(1) applies to dissolutions that occur after December 20, 2002.

(2) Subject to subsection (7) and section 9, subsections 3(2) to (19) and subsection 5907(2.9) and (2.91) of the Regulations, as enacted by subsection 3(28), apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if a taxpayer referred to in subsection 5907(2.9) of the Regulations makes a valid election under subsection 133(69) of the *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE, subsections 5907(2.9) and (2.91) of the Regulations, as enacted by subsection 3(28), apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(3) Subsections 3(20) to (23) apply in respect of dispositions in respect of which an election was made in respect of which section 1 applies.

(4) Subject to section 9, subsection 3(27) applies to taxation years, of a foreign affiliate of a taxpayer, that begin on or after December 20, 2002.

(5) Subsection 3(24) applies to payments made after December 20, 2002.

(6) Subject to section 9, subsections 3(25) and (26) apply in respect of a disposition made after December 20, 2002, other than dispositions made under a written agreement made by the foreign affiliate before December 20, 2002.

(7) Subsections 5907(2.8) to (2.83) of the Regulations, as enacted by subsection 3(28), clause (*d*)(ii)(H) of the definition "exempt earnings" as enacted by subsection 3(7) and clause (*c*)(ii)(H) of the definition "exempt loss" as enacted by subsection 3(9), apply to taxation years, of a foreign affiliate of a taxpayer, to which subclauses 95(2)(*a*)(ii)(D)(III) to (V) of the *Income Tax Act*, as proposed by subclause 133(8) of the *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE, apply.

(8) Subsection 3(29) applies to dispositions to which paragraphs 95(2)(*f*.3) to (*f*.9) of the *Income Tax Act*, as proposed by subclause 133(15) of *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE, apply.

(9) Subsection 3(30) applies to dissolutions that begin after December 20, 2002 and payments of dividends and distributions of property made after December 20, 2002.

(10) Subsection 3(31) applies after 1992, except that if the corporation elected in accordance with paragraph 111(4)(*a*) of the Statutes of Canada, 1994, chapter 21, subsection 3(31) applies to the corporation from the corporation's time of continuation (within the meaning assigned by that paragraph).

(11) Subsection 3(32) applies after 1992, except that, in its application in respect of dispositions that occur on or before ANNOUNCEMENT DATE, the reference in subsection 5907(14) of the Regulations, as enacted by subsection 3(32) to the expression "subsection (13)" is to be read as a reference to the expression "paragraph 13(*a*)".

8. Section 4 applies after December 20, 2002.

Elections - Early Application of Certain Provisions

9. If a taxpayer makes a valid election under subsection 133(68) of the *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE, subsections 3(2) to (10), (13) to (16), (18), (19) and (27) apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994, except that

(*a*) clause (*d*)(ii)(D) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection 3(7), is, for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

> "(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a member of a particular partnership (other than where the non-resident corporation would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (*a*) of that definition), amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident

corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,";

(*b*) clauses (*d*)(ii)(F) and (G) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection 3(7), are, for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

"(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a member of a particular partnership (other than where the other foreign affiliate would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (*a*) of that definition), amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a member of a particular partnership (other than where the particular affiliate would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" in subsection 248(1) of the Act were read without reference to paragraph (*a*) of that definition), amounts required to be included in computing the income of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,";

(*c*) where the taxpayer has not made a valid election under subsection 133(37) of the *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE,

(i) subclause (*d*)(ii)(H)(I) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection 3(7), is to be read as follows:

"(I) the property is shares of a foreign affiliate (in this clause referred to as the "third affiliate") of the particular corporation in respect of which the particular corporation has a qualifying interest and those shares are excluded property, and", **and**

(ii) subclause (*c*)(ii)(H)(I) of the definition "exempt loss" in subsection 5907(1) of the Regulations, as enacted by subsection 3(9), is to be read as follows:

"(I) the property is shares of a foreign affiliate (in this clause referred to as the "third affiliate") of the particular corporation in respect of which the particular corporation has a qualifying interest and those shares are excluded property, and";

(*d*) clause (*c*)(ii)(D) of the definition "exempt loss" in subsection 5907(1) of the Regulations, as enacted by subsection 3(9), is, for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

"(D) if a non-resident corporation to which the particular affiliate and the particular corporation are related throughout the year is a member of a particular partnership (other than where the non-resident corporation would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (*a*) of that definition), amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(A) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the non-resident corporation is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,"**, and**

(*e*) clauses (*c*)(ii)(F) and (G) of the definition "exempt loss" in subsection 5907(1) of the Regulations, as enacted by subsection 3(9), is, for the taxation years, of all foreign affiliates of the taxpayer, that end before 2000, to be read as follows:

"(F) if another foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest throughout the year is a member of a particular partnership (other than where the other foreign affiliate would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (*a*) of that definition), amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(B) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the other foreign affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,

(G) if the particular affiliate is a member of a particular partnership (other than where the particular affiliate would be a specified member of the particular partnership at any time in a fiscal period of the particular partnership that ends in the year if the definition "specified member" of a partnership in subsection 248(1) of the Act were read without reference to paragraph (*a*) of that definition), amounts required to be included in computing the loss of the particular affiliate from an active business for the year because of clause 95(2)(*a*)(ii)(C) of the Act that are derived from amounts paid or payable, directly or indirectly, to it or to another partnership of which it is a member by the particular partnership, to the extent that, if the particular partnership were a foreign affiliate of a corporation and were resident in the country in which the particular affiliate is resident and subject to income taxation, the amounts paid or payable by the particular partnership would be deductible in computing its exempt earnings or exempt loss for the year or for a subsequent taxation year,".

Appendix D

DRAFT *INCOME TAX REGULATIONS* AND EXPLANATORY NOTES

Amendments related to Prescribed Properties and Permanent Establishments

1. (1) The *Income Tax Regulations* are amended by adding the following after Section 8201:

8202. (1) For the purposes of the definition "investment business" in subsection 95(1), and of subparagraph 95(2)(*l*)(iii) and paragraphs 95(2.3)(*b*) and (2.4)(*a*), of the Act, a "permanent establishment" of a person or partnership (which person or partnership is referred to in this subsection and subsection (3) as the "person") means

(*a*) a fixed place of business of the person, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse; or

(*b*) if the person does not have any fixed place of business, the principal place at which the person's business is conducted.

(2) Notwithstanding subsection (1), for the purposes of the definition "investment business" in subsection 95(1), and of subparagraph 95(2)(*l*)(iii) and paragraphs 95(2.3)(*b*) and (2.4)(*a*), of the Act, a "permanent establishment" of a person or partnership (which person or partnership is referred to in this subsection as the "person") has the meaning given to the expression "permanent establishment" in an agreement or a convention for the avoidance of double taxation that the Government of Canada has concluded with a country and that has the force of law in Canada if the person is a resident of that country for the purpose of the agreement or convention.

(3) For the purpose of subsection (1),

(*a*) if a person carries on business through an employee or agent, established in a particular place, who has general authority to contract for the person or who has a stock of merchandise owned by the person from which the employee or agent regularly fills orders, the person is deemed to have a fixed place of business at that place,

(*b*) if a person is an insurance corporation, the person is deemed to have a fixed place of business in each country in which the person is registered or licensed to do business, (*c*) if a person uses substantial machinery or equipment at a particular place at any time in a taxation year, the person is deemed to have a fixed place of business at that place,

(*d*) the fact that a person has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise at a particular place does not of itself mean that the person has a fixed place of business at that place, and

(*e*) the fact that a corporation has a subsidiary controlled corporation at a place or a subsidiary controlled corporation engaged in trade or business at a place does not of itself mean that the corporation is operating a fixed place of business at that place.

(2) Subsection (1) applies to the 1999 and subsequent taxation years. However, if the taxpayer has made a valid election under subsection 133(68) of the *Legislative Proposals and Draft Regulations relating to Income Tax* released on ANNOUNCEMENT DATE, subsection (1) applies to the 1994 and subsequent taxation years.